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code of federal regulations

Transportation

item 572-C

ORIGINAL

49

PARTS 1 TO 99

Revised as of October 1, 1981

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COMPLETED

272

code of federal regulations

Transportation

49

PARTS 1 TO 99

Revised as of October 1, 1981

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Cite this Code **CFR**

thus: **49 CFR 1.1**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16..... as of January 1
Title 17 through Title 27..... as of April 1
Title 28 through Title 41..... as of July 1
Title 42 through Title 50..... as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date.

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What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

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(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR 51.4.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1981.

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THIS TITLE

Title 49—TRANSPORTATION is composed of eight volumes. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1981.

The parts in these volumes are arranged in the following order: Parts 1-99, Subtitle A—Office of the Secretary of Transportation; Parts 100-177 and Parts 178-199, Chapter I—Research and Special Programs Administration (DOT); Parts 200-399, Chapter II—Federal Railroad Administration (DOT), and Chapter III—Federal Highway Administration (DOT); Parts 400-999, Chapter IV—Coast Guard (DOT), Chapter V—National Highway Traffic Safety Administration (DOT), Chapter VI—Urban Mass Transportation Administration (DOT), Chapter VIII—National Transportation Safety Board, and Chapter IX—United States Railway Association; Parts 1000-1199, Parts 1200-1299, and Part 1300 to End, all Chapter X—Interstate Commerce Commission.

In the volume containing Parts 100-177 see § 172.101 for the Hazardous Materials Table. Parts 200-399 of this title contains the Federal Motor Carrier Safety Regulations, and a Subject Index to these regulations follows Chapter III. The Federal Motor Vehicle Safety Standards appear in Part 571.

For this volume Mildred Lee Isler was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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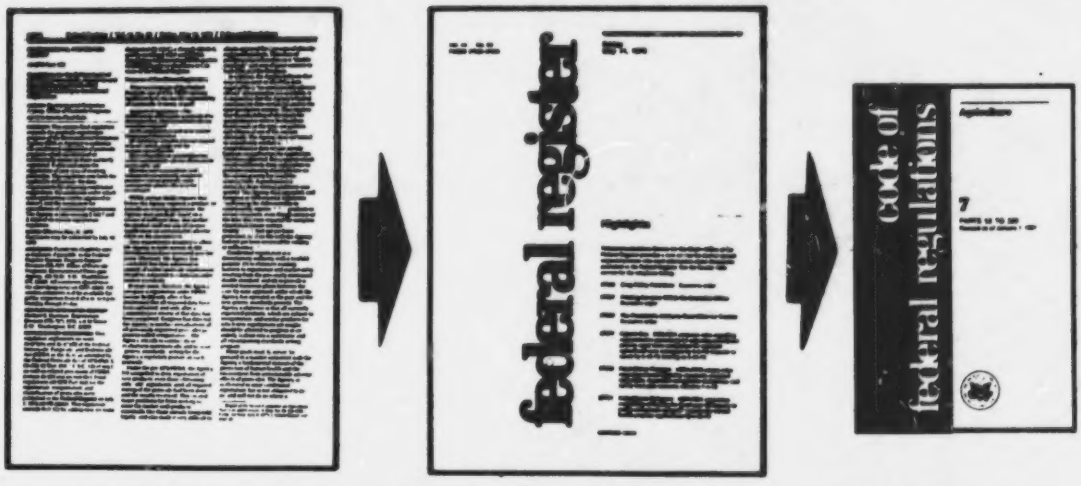

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Title 49—Transportation

(This book contains Parts 1 to 99)

Part

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION 1

NOTE: Other regulations issued by the Department of Transportation appear in Title 46, Chapter II.

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PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

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APPENDIX A—DELEGATIONS AND REDELEGATIONS BY SECRETARIAL OFFICERS

AUTHORITY: Secs. 3, 9, Department of Transportation Act (49 U.S.C. 1652 and 1657(e)).

SOURCE: Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, unless otherwise noted.

Subpart A—General

§ 1.1 Purpose.

This part describes the organization of the Department of Transportation and provides for the performance of duties imposed upon, and the exercise of powers vested, in the Secretary of Transportation by law.

§ 1.2 Definitions.

As used in this part, "Administrator" includes—

(a) The Coast Guard Commandant.

(b) The Federal Aviation Administrator.

(c) The Federal Highway Administrator.

(d) The Federal Railroad Administrator.

(e) The National Highway Traffic Safety Administrator.

(f) The Urban Mass Transportation Administrator.

(g) The Administrator of the St. Lawrence Seaway Development Corporation.

(h) The Research and Special Programs Administrator.

(i) The Maritime Administrator.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-157, 45 FR 83403, Dec. 18, 1980; Amdt. 1-164, 46 FR 47458, Sept. 28, 1981]

§ 1.3 Organization of the Department.

(a) The Secretary of Transportation is the head of the Department.

(b) The Department is comprised of the Office of the Secretary and the following operating elements, the heads of which report directly to the Secretary:

(1) The U.S. Coast Guard, headed by the Commandant.

(2) The Federal Aviation Administration, headed by the Administrator.

(3) The Federal Highway Administration, headed by the Administrator.

(4) The Federal Railroad Administration, headed by the Administrator.

(5) The National Highway Traffic Safety Administration, headed by the Administrator.

(6) The Urban Mass Transportation Administration, headed by the Administrator.

(7) The St. Lawrence Seaway Development Corporation, headed by the Administrator.

(8) The Research and Special Programs Administration, headed by the Administrator.

(9) The Maritime Administration, headed by the Administrator and including within it the Maritime Subsidy Board composed of the Maritime Administrator, the Deputy Maritime Administrator, and the Chief Counsel of the Maritime Administration.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-157, 45 FR 83403, Dec. 18, 1980; Amdt. 1-164, 46 FR 47458, Sept. 28, 1981]

§ 1.4 General responsibilities.

(a) *Office of the Secretary.* Provides for—

(1) Leadership in formulating and executing well-balanced national and international transportation objectives, policies, and programs;

(2) Stimulating and promoting research and development in all modes and types of transportation, with special emphasis on transportation safety;

(3) Coordinating the various transportation programs of the Federal Government;

(4) Encouraging maximum private development of transportation services;

(5) Responsive, timely, and effective liaison with Congress, and public and private organizations on transportation matters;

(6) Innovative approaches to urban transportation and environmental enhancement programs; and

(7) Effective management of the Department as a whole.

(b) *U.S. Coast Guard.* Is responsible for—

(1) Upon the high seas and waters subject to the jurisdiction of the United States—

(i) Enforcing or assistance in enforcing applicable Federal laws;

(ii) Administering laws and promulgating and enforcing regulations for promoting safety of life and property, covering all matters not specifically delegated by law to some other executive department or reserved to the States;

(iii) Developing, establishing, maintaining, and operating, with due regard to the requirements of national defense, aids to navigation, icebreaking facilities, and rescue facilities for promoting safety; and

(2) Maintaining a state of readiness to function as a specialized service in the Navy, in time of war or when the President shall direct, as provided in section 3 of title 14, United States Code.

(c) *The Federal Aviation Administration.* Is responsible for—

(1) Promulgating and enforcing regulations on all safety matters relating to the manufacture, operation, and maintenance of aircraft;

(2) Registering aircraft and recording rights in aircraft;

(3) Developing, modifying, testing, and evaluating systems, procedures, facilities, and devices needed for the safe and efficient navigation and traffic control of aircraft;

(4) Locating, constructing or installing, maintaining, and operating Federal aids to air navigation, wherever necessary;

(5) Developing air traffic regulations, and administering air traffic control of civil and military air operations within U.S. airspace;

(6) Providing grants-in-aid for developing public airports; and

(7) Promoting and encouraging civil aviation abroad through technical aviation assistance to other governments.

(d) *The Federal Highway Administration.* Is responsible for—

(1) Planning, in cooperation with the States, the national highway system;

(2) Providing for improving, in cooperation with the States, roads on the Federal-aid primary, secondary, and interstate highway systems and urban extensions thereof;

(3) Highway beautification and scenic enhancement of the Federal-aid highway systems;

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(4) Surveying and constructing forest highway system roads, defense highways and access roads, and parkways and roads in national parks and other federally administered areas;

(5) Inspecting records of motor carriers operating in interstate commerce, inspecting motor carrier vehicles, and investigating accidents and reporting violations of motor carrier safety regulations; and

(6) Developing and administering uniform State standards for highway safety programs with respect to identification and surveillance of accident locations; highway design, construction, and maintenance, including highway related aspects of pedestrian safety; and traffic control devices.

(e) *The Federal Railroad Administration.* Is responsible for—

(1) Operating and managing the Alaska Railroad;

(2) Conducting research and development activity in support of improved rail transportation;

(3) Regulating safety functions pertaining to railroads, express companies, and water carriers operating in connection with railroads under a common control, management, or arrangement for continuous carriage or shipment; and

(4) Investigating and issuing reports concerning collisions, derailments, and other railroad accidents resulting in serious injury to persons or to the property of a railroad.

(f) *The National Highway Traffic Safety Administration.* Is responsible for—

(1) Promulgating uniform standards for developing State highway safety programs, except for those standards the development and administration of which are delegated to the Federal Highway Administration.

(2) Establishing, prescribing, and enforcing National standards for improving safety in the operation and performance of motor vehicles and equipment.

(3) Informing the public of the comparative characteristics and operational cost of passenger motor vehicles and requiring display of comparative insurance costs by automobile dealers.

(4) Administering a program of mandatory automotive fuel economy standards for passenger and non-passenger automobiles for model year 1978 and beyond.

(5) Establishing safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers and enforcing the prohibition against tampering with odometers.

(g) *The Urban Mass Transportation Administration.* Is responsible for—

(1) Exercising the authority vested in the Secretary for developing comprehensive and coordinated mass transportation systems to serve metropolitan and other urban areas;

(2) Administering urban mass transportation programs and functions; and

(3) Assuring appropriate liaison and coordination with other governmental organization, with respect to the foregoing.

(h) *The St. Lawrence Seaway Development Corporation.* Is responsible for the development, operation, and maintenance of that part of the St. Lawrence Seaway within the territorial limits of the United States.

(i) *The Research and Special Programs Administration.* Is responsible for:

(1) Planning, developing, initiating and managing programs in all fields of transportation research and development. Maintaining the capability to perform research and analysis in transportation planning and socio-economic effects, program management, and technological support in response to request for line participation in DOT policy formulations. Particular efforts will be made on transportation systems problems, advanced transportation concepts, and on multimodal transportation. RSPA will develop and maintain a vital statistics and related transportation information data base;

(2) Exercising for the Secretary the multimodal hazardous materials (HM) program and prescribing and enforcing safety regulations for the transportation of gases or hazardous liquids by pipeline;

(3) Developing, managing, and evaluating programs and research activities for the security of passengers and cargo in the transportation systems and for the prevention of unlawful or other acts adversely affecting the effi-

ciency or integrity of the Nation's transportation systems and providing leadership in the development and improvement of coordinated domestic and international transportation services;

(4) Providing leadership on all technical, navigation and communication, and systems engineering activities;

(5) Providing a point of contact for the Department with the academic community to encourage transportation research;

(6) Overseeing the effective discharge of the Secretary's statutory and administrative transportation responsibilities in all emergencies affecting the national defense and in national or regional crises; and

(7) Managing a Transportation Safety Institute which designs and conducts training programs responsible to the requirements of Government and industry as expressed by the operating elements of the Department.

(j) *The Maritime Administration.* Is responsible for:

(1) Fostering the development and maintenance of an American merchant marine sufficient to meet the needs of the national security and of the domestic and foreign commerce of the United States;

(2) Awarding and administering construction-differential subsidy contracts and operating-differential subsidy contracts to aid the American merchant marine, and trade-in allowances for new ship construction;

(3) Entering into and administering agreements for capital contruction funds (excepting fishing vessels) and construction reserve funds;

(4) Providing insurance on construction loans and ship mortgages or guarantees on ship financing obtained from private sources for ship construction and reconstruction (excepting fishing vessels);

(5) Providing assistance to the shipping industry to generate increased trade and cargo shipments on U.S.-flag ships;

(6) Promoting development of ports and intermodal transportation systems;

(7) Promoting development of the domestic waterborne commerce of the United States;

(8) Overseeing the administration of cargo preference statutes;

(9) Entering into and administering charters and general agency agreements for operation of Government-owned merchant ships;

(10) Maintaining custody of, and preserving, ships in the National Defense Reserve Fleet;

(11) Selling surplus Government-owned ships;

(12) Supervising design and construction of ships for Government account;

(13) Furnishing war risk insurance on privately-owned merchant ships;

(14) Administering the foreign transfer program regarding ships and other maritime properties;

(15) Training merchant marine officers;

(16) Conducting research and development to improve and promote the waterborne commerce of the United States; and

(17) Issuing rules and regulations with respect to the foregoing functions.

(k) *The Maritime Subsidy Board (Within the Maritime Administration).* Is responsible for:

(1) Making, amending, and terminating subsidy contracts, which shall be deemed to include, in the case of construction-differential subsidy, (i) the contract for the construction, reconstruction, or reconditioning of a vessel, and (ii) the contract for the sale of the vessel to the subsidy applicant or the contract to pay a construction-differential subsidy and the cost of the national defense features, and, in the case of operating-differential subsidy, the contract with the subsidy applicant for the payment of the subsidy.

(2) Conducting hearings and making determinations antecedent to making, amending, and terminating subsidy contracts, under the provisions of Titles V, VI, and VII, and sections 301 (except investigations, hearings, and determinations, including changes in determinations, with respect to minimum manning scales, minimum wage scales, and minimum working conditions), 708, 805(a), and 805(f) of the

Merchant Marine Act, 1936, as amended (the "Act").

(3) Making readjustments in determinations as to operating cost differentials under Section 606 of the Act.

(4) Approving the sale, assignment, or transfer of any operating subsidy contract under Section 608 of the Act.

(5) Investigating and determining (i) the relative cost of construction of comparable vessels in the United States and foreign countries, (ii) the relative cost of operating vessels under the registry of the United States and under foreign registry, and (iii) the extent and character of aids and subsidies granted by foreign governments to their merchant marines, under the provisions of subsections (c), (d), and (e) of section 211 of the Act.

(6) Performing so much of the functions with respect to adopting rules and regulations, subpoenaing witnesses, administering oaths, taking evidence, and requiring the production of books, papers, and documents, under sections 204 and 214 of the Act, as they relate to the functions of the Board.

(7) Performing as much of the functions specified in Section 12 of the Shipping Act, 1916, as amended, as the same relate to the functions of the Board under paragraphs (k) (1) through (6) of this section.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-120, 41 FR 42956, Sept. 29, 1976; Amdt. 1-125, 41 FR 53798, Dec. 9, 1976; Amdt. 1-157, 45 FR 83403, Dec. 18, 1980; Amdt. 1-164, 46 FR 47458, Sept. 28, 1981]

Subpart B—Office of the Secretary

§ 1.21 Purpose.

This subpart establishes the basic organizational structure, spheres of primary responsibility, and lines of authority in the Office of the Secretary. It also describes the relationships between the Office of the Secretary and the operating administrations, and provides for succession to the position of Secretary in case of need.

§ 1.22 Structure.

The structure of the Office of the Secretary, through the level of functional offices, is as follows:

(a) *Secretary and Deputy Secretary.* The Secretary and Deputy Secretary are assisted by the Executive Secretariat, the Contract Appeals Board, the Departmental Office of Civil Rights, the Office of Small and Disadvantaged Business Utilization, the Office of Public Affairs, and the Office of Transportation Research and Technology, all of which report to the Secretary. The Assistant Secretaries, the General Counsel, the Inspector General, and the Regional Representatives of the Secretary also report directly to the Secretary.

(b) *Office of the Assistant Secretary for Policy and International Affairs.* This Office is composed of the Offices of Industry Policy; Environment and Safety; Economics and Public Investment; International Policy and Programs; and Regulatory Policy.

(c) *Office of the General Counsel.* This Office is composed of the Offices of Legislation; Litigation; Regulation and Enforcement; Environmental, Civil Rights, and General Law; International Law; and the Board for Correction of Military Records.

(d) *Office of the Assistant Secretary for Budget and Programs.* This Office is composed of the Offices of Programs and Evaluation; and Budget.

(e) *Office of the Assistant Secretary for Governmental Affairs.* This Office is composed of the Offices of Congressional Affairs; Intergovernmental Affairs; Community Planning Assistance; Technology Sharing; and Consumer Liaison.

(f) *Office of the Assistant Secretary for Administration.* This Office is composed of the Offices of Personnel and Training; Management Planning; Automated Systems Policy; Administrative Operations; Security; Installations and Logistics; Financial Systems; and the Transportation Computer Center.

(g) *Office of Inspector General.* This Office is composed of the Offices of Surface Transportation Programs; Marine and Rail Programs; Aviation and Research Programs; DOT-Wide Programs; Regional Programs; Investigative Operations; Special Assignments; Policy and Standards; Planning and Procedures; Resources Management; Special Programs and Evalua-

tions; and Regional Audit Offices; and Field Investigative Offices.

(h) *Regional Representatives of the Secretary.* These officials represent the Secretary in the field and constitute a principal point of contact for the exchange of information in regional, interagency, and intergovernmental affairs.

[Amdt. 1-157, 45 FR 83403, Dec. 18, 1980]

§ 1.23 Spheres of primary responsibility.

(a) *Secretary and Deputy Secretary.* Overall planning, direction, and control of Departmental affairs including civil rights, contract appeals, small and disadvantaged business participation in Departmental programs, public affairs, and transportation research and technology.

(b) *Assistant Secretary for Policy and International Affairs.* Domestic and international transportation policy development, coordination, and guidance; forecasting and intermodal planning; Federal economic policy, regulatory and legislative review and evaluation; transportation energy, safety and environmental impact coordination and review; international technological cooperation; and technical assistance to developing countries.

(c) *General Counsel.* Legal services as the chief legal officer of the Department, legal advisor to the Secretary, the Office of the Secretary, and final authority within the Department on questions of law; professional supervision, including coordination and review, over the legal work of the legal offices of the Department; drafting of legislation and review of legal aspects of legislative matters; point of coordination for the Office of the Secretary and Department Regulations Council; advice on questions of international law; exercise of functions, powers, and duties as Judge Advocate General under the Uniform Code of Military Justice (Chapter 47 of Title 10, United States Code) with respect to the United States Coast Guard; advice and assistance with respect to uniform time matters; review and final action on applications for reconsideration of initial decisions not to disclose unclassified records of the Office of the Secretary requested under 5 U.S.C. 552(a)(3); promotion and coordination of efficient use of Departmental legal resources; recommendation, in conjunction with the Assistant Secretary for Administration, of legal career development programs within the Department; review and final action on application for correction of military records of the United States Coast Guard.

(d) *Assistant Secretary for Budget and Programs.* Preparation, review and presentation of Department budget estimates; liaison with OMB and Congressional Budget and Appropriations Committees; Departmental financial plans, apportionments, reapportionments, reprogrammings, allotments; program and systems evaluation and analysis; program evaluation criteria; program resource plans; analysis and review of legislative proposals and one-time reports and studies required by the Congress; budgetary and selected administrative matters relating to the immediate Office of the Secretary.

(e) *Assistant Secretary for Governmental Affairs.* Coordination of legislative and non-legislative relationships; Congressional affairs; communications and coordination with Federal, State and local government, industry and labor, and with citizens and organizations representing consumers; sharing of related technology in developing and promoting DOT programs; and coordination and technical assistance on intermodal planning matters.

(f) *Assistant Secretary for Administration.* Organization; delegations of authority; personnel ceiling control; management studies; personnel management; training; logistic and procurement policy (except for the responsibility listed for the Office of Small and Disadvantaged Business Utilization in this section); accounting and data systems management; financial information systems management; paperwork management; management information security; computer support and administrative support services for the Office of the Secretary and certain other components of the Department.

(g) *Inspector General.* Conduct, supervise, and coordinate audits and investigations; review existing and proposed legislation and make recommen-

dations to the Secretary and Congress (Semi-annual reports) concerning their impact on the economy and efficiency of program administration, or the prevention and detection of fraud and abuse; recommend policies for and conduct, supervise, or coordinate other activities of the Department for the purpose of promoting economy and efficiency in program administration, or preventing and detecting fraud and abuse.

(h) *Executive Secretary.* Central facilitative staff for the immediate Office of the Secretary and the Secretarial officers.

(i) *Contract Appeals Board.* Hearings and decisions on appeals from decisions of Departmental contracting officers and on claims for extraordinary relief under Pub. L. 85-804.

(j) *Departmental Office of Civil Rights.* DOT Director of Equal Employment Opportunity; Department-wide contract compliance officer; Title VI (Civil Rights Act of 1964) coordinator; Department-wide compliance with related laws, Executive Orders, regulations, and policies, and formal complaints of discrimination.

(k) *Office of Public Affairs.* Public information and Departmental relations with the news media, the general public, and selected special publics.

(l) *Regional Representatives of the Secretary.* Interagency, intergovernmental, and Departmental coordination in the field; membership on Regional Councils and Field Coordination Groups.

(m) *Office of Small and Disadvantaged Business Utilization.* Responsible for the Department's implementation and execution of the functions and duties under sections 8 and 15 of the Small Business Act, as amended, (15 U.S.C. 637 and 644) and for other Departmental small and disadvantaged business policy direction.

(n) *Office of Transportation Research and Technology.* Research and technology advisor; planning and coordinating an overall Departmental research and technology program; research policy oversight; start-up management for the Department's Cooperative Automotive Research Program; research and technology prioritization process; and principal research and technology representative of the Secretary with persons and organizations outside of the Department.

[Amdt. 1-157, 45 FR 83403, Dec. 18, 1980]

§ 1.24 Authority.

(a) The Deputy Secretary may exercise the authority of the Secretary, except where specifically limited by law, order, regulation, or instructions of the Secretary.

(b) Acting in his or her own name and title, each Assistant Secretary, the Inspector General, or the General Counsel, within his or her sphere of responsibility, is authorized to identify and define the requirements for, and to recommend to the Secretary, new or revised Departmental policies, plans, and proposals. Each of these officers is authorized to issue Departmental standards, criteria, systems and procedures that are consistent with applicable laws, Executive Orders, Government-wide regulations and policies established by the Secretary, and to inspect, review, and evaluate Departmental program performance and effectiveness and advise the Secretary regarding the adequacy thereof.

(c) Except for nondelegable statutory duties, including those which devolve as a result of succession to act as Secretary of Transportation, each Deputy Assistant Secretary, the Deputy Inspector General, and the Deputy General Counsel is authorized to act for and perform the duties of his or her principal in the absence or disability of the principal and as otherwise directed by the principal.

(d) *Inspector General.* The Inspector General shall report to and be under the general supervision of the Secretary and Deputy Secretary. In accordance with the statutory intent of the Inspector General Act to create an independent and objective unit, the Inspector General is authorized to make such investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary and desirable. Neither the Secretary nor the Deputy Secretary shall prevent or prohibit the Inspector General from initi-

ating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-157, 45 FR 83404, Dec. 18, 1980]

§ 1.25 Relationships.

(a) *Normal staff role.* Normally, the functions of the Assistant Secretaries are staff and advisory in nature. In performing their functions, the Assistant Secretaries are responsible for continuing liaison and coordination among themselves and with the operating administrations to—

(1) Avoid unnecessary duplication of effort by or in conflict with the performance of similar activities by the operating administrations and the other Assistant Secretaries pursuant to their Secretarial delegations of authority; and

(2) Assure that the views of the operating administrations are considered in developing Departmental policies, plans, and proposals.

The Assistant Secretaries are also available to assist, as appropriate, the operating administrations in implementing Departmental policy and programs. As primary staff advisors to the Secretary, the Assistant Secretaries are concerned with transportation matters of the broadest scope, including modal, intermodal, and other matters of Secretarial interest.

(b) *Exceptions.* There are exceptions to the normal staff role described in paragraph (a) of this section. In selected instances, the Secretary has specifically delegated to Assistant Secretaries authority which they may exercise on the Secretary's behalf. For example, the Secretary has delegated authority to the Assistant Secretary for Policy and International Affairs to decide on most requests to intervene or appear before administrative agencies, subject to the concurrence of the General Counsel. Also, from time to time, activities of an operational character may be delegated to an Assistant Secretary when the nature of the function or its stage of development makes it untimely to effect assignment to an operating administration.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-157, 45 FR 83405, Dec. 18, 1980]

§ 1.26 Secretarial succession.

(a) The following officials, in the order indicated, shall act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or, in case of a vacancy, until a successor is appointed:

(1) Deputy Secretary.

(2) General Counsel.

(3) Assistant Secretary for Policy and International Affairs.

(4) Assistant Secretary for Governmental Affairs.

(5) Assistant Secretary for Budget and Programs.

(6) Assistant Secretary for Administration.

(7) Saint Lawrence Seaway Development Corporation Administrator.

(b) Without regard to the foregoing, a person directed to perform the duties of the Secretary pursuant to 5 U.S.C. 3347 shall act as Secretary of Transportation.

[Amdt. 1-157, 45 FR 83405, Dec. 18, 1980, as amended by Amdt. 1, 46 FR 6012, Jan. 21, 1981]

Subpart C—Delegations

§ 1.41 Purpose.

(a) Except as provided in paragraph (b) of this section, this subpart provides for the exercise of the powers and performance of the duties vested in the Secretary of Transportation by law.

(b) For delegations of authority vested in the Secretary by Executive Order 11652 originally to classify documents as secret or confidential, see § 8.11 of this subtitle.

§ 1.42 Exercise of authority.

In exercising powers and performing duties delegated by this subpart or redelegated pursuant thereto, officials of the Department of Transportation are governed by applicable laws, Executive Orders and regulations and by policies, objectives, plans, standards, procedures, and limitations as may be issued from time to time by or on

behalf of the Secretary, or, with respect to matters under their jurisdictions, by or on behalf of the Deputy Secretary, an Assistant Secretary, the Inspector General, the General Counsel, or an Administrator. This includes, wherever specified, the requirement for advance notice to, prior coordination with, or prior approval by an authority other than that of the official proposing to act.

[Amdt. 1-114, 41 FR 1288, Jan. 7, 1976, as amended by Amdt. 1-157, 45 FR 83405, Dec. 18, 1980]

§ 1.43 General limitations and reservations.

(a) All powers and duties that are not delegated by the Secretary in this subpart, or otherwise vested in officials other than the Secretary, are reserved to the Secretary.

(b) Except as provided in § 1.42 and subject to paragraph (a) of this section and § 1.44, the Deputy Secretary, the Assistant Secretaries, the Inspector General, the General Counsel, and the Administrators exercise the powers and perform the duties delegated to them under this subpart.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-157, 45 FR 83405, Dec. 18, 1980]

§ 1.44 Reservation of authority.

The delegations of authority in § 1.45 through § 1.53 and § 1.66 and § 1.67 do not extend to the following actions, authority for which is reserved to the Secretary or his delegatee within the Office of the Secretary:

(a) *General transportation matters.* (1) Transportation leadership authority under section 4(a) of the Department of Transportation Act (49 U.S.C. 1653(a)).

(2) Functions relating to transportation activities, plans, and programs under section 4(g) of the Department of Transportation Act (49 U.S.C. 1653(g)).

(3) Authority to develop, prepare, coordinate, transmit, and revise transportation investment standards and criteria under section 7 of the Department of Transportation Act (49 U.S.C. 1656).

(4) Authority relating to standard time zones and advanced (daylight) time (15 U.S.C. 260 et seq.).

(5) Authority related to national transportation policy under section 3 of the Airport and Airway Development Act of 1970 (84 Stat. 219).

(b) *Legislation and reports.* (1) Submission to the President, the Director of the Office of Management and Budget, or the Congress of proposals or recommendations for legislation, Executive orders, proclamations or reorganization plans or other Presidential action.

(2) Submission to Congress or the President of any report or any proposed transportation policy or investment standards or criteria, except with the prior written approval of the Secretary.

(c) *Budget and finance.* (1) Approval and submission to the Office of Management and Budget of original or amended budget estimates or requests for allocations of personnel ceiling (31 U.S.C. 22-24).

(2) Approval of requests for legislation which, if enacted, would authorize subsequent appropriations for the Department (31 U.S.C. 581b).

(3) Transfer of the balance of an appropriation from one operating element to another within the Department (31 U.S.C. 581c).

(4) Submission to the Director of the Office of Management and Budget of requests for the transfer of the balance or portions of an appropriation from one element to another within the Department (31 U.S.C. 665).

(d) *Interventions and appearances.* Except with respect to proceedings relating to safety fitness of an applicant (49 U.S.C. 1653(e)), the making of decisions on requests to intervene or appear before courts and administrative agencies to present the views of the Department.

(e) *Personnel.* (1) Recommendations to the Civil Service Commission of the allocation of a position to GS-16, 17, or 18 or an equivalent level (5 U.S.C. 5108).

(2) Recommendations to the Civil Service Commission of approval of the qualifications of any candidate for a position at grade GS-16, 17, or 18 or

an equivalent level (5 U.S.C. 3324), or to an executive level position.

(3) Recommendations to the Civil Service Commission of a Lump-Sum Incentive Award in Excess of $5,000 (5 U.S.C. 4502).

(4) Approval of the following actions relating to Schedules A, B, and C and noncareer executive assignment positions or incumbents, except for actions under Schedules A and B limited to one year or less at grade GS-9 or lower, or an equivalent level:

(i) Establishment or abolition of positions;

(ii) Hires;

(iii) Promotions other than quality and periodic within-grade promotions;

(iv) Transfer of personnel to Schedule A, B, or C positions or non-career executive assignment positions, either permanently or on detail; and

(v) Transfer of personnel from Schedule A, B, or C or non-career executive assignment positions to career Civil Service positions.

(5) Approval of employment of experts or consultants.

(6) Authority relating to scientific and professional positions under section 6(a) (5) of the Department of Transportation Act (49 U.S.C. 1655(a)(5)).

(7) Authority to determine the maximum limit of age for appointment of air traffic controllers as provided by 5 U.S.C. 3307(b) (86 Stat. 141).

(8) Authority to develop, coordinate, and issue wage schedules under the Federal Wage system, except as delegated to the Commandant of the Coast Guard at § 1.46.

(f) *Security.* (1) Suspension or removal of an employee from a position in the Department for security reasons under Executive Order 10450 (3 CFR, 1949-53 Comp., p. 936) or the employment in the Department of a person who was previously separated for security reasons from any Federal agency.

(2) Authorizing the filling of a critical-sensitive position for a limited period by a person on whom a preappointment full field investigation has not been completed (Executive Order 10450).

(3) Requesting Presidential approval of a claim of executive privilege with respect to information requested by a congressional committee or Member of Congress.

(4) Making determinations prescribed by sections 4(a)(2)(B), 4(b)(3), 5(b), and 9 of Executive Order 10865 (3 CFR, 1959-63 Comp., p. 398) relating to the adjudication and final denial of access to classified information to industry personnel.

(5) Making those determinations or delegations prescribed by sections 2(B)(3), 5(E)(1) and (2) of Executive Order 11652 (37 FR 5209, March 10, 1972) which are reserved to the head of the Department.

(g) *Procurement.* Exercise of the extraordinary authority for defense contracts provided for in Pub. L. 85-804 (50 U.S.C. 1431-1435), and considerations and decisions on contract appeals and other matters pursuant to the Department of Transportation Contract Appeals Regulations (41 CFR Part 12-60).

(h) *Printing.* Requesting approval of the Joint Committee on Printing for any procurement or other action requiring Committee approval.

(i) *Interagency agreements.* Execution of any written interdepartmental or interagency agreement with the head of another executive department or agency.

(j) *Withholding of funds.* Withholding or suspension of Federal-Aid Highway funds on a statewide basis and the waiver or compromise of such withholding or suspension.

(k) *Alaska Railroad.* Extension or abandonment of railroad service.

(l) *National Highway Safety Advisory Committee.* Directing the National Highway Safety Advisory Committee to meet (23 U.S.C. 404(c)).

(m) *Coast Guard.* The following powers relating to the Coast Guard:

(1) Appointment of Advisory Committee to the Academy (14 U.S.C. 193).

(2) Fixing date for visit to Academy by Board of Visitors (14 U.S.C. 194(b)).

(3) Establishment of promotion zone for selection of rear admirals (14 U.S.C. 256(b)).

(4) Removal of an officer from active duty when recommended by a board convened under section 323 of title 14, United States Code (14 U.S.C. 326).

(5) Responsibility for supervising activities of Reserve components (10 U.S.C. 264(b)).

(6) Convening General Courts-Martial under the personal authority granted by law (10 U.S.C. 822(a)(2)).

(7) Approval of execution of a sentence dismissing a commissioned officer or cadet (10 U.S.C. 871(b)).

(8) Approval of vacation of a suspension of dismissal (10 U.S.C. 872(b)).

(9) Establishing procedures for the correction of military records (10 U.S.C. 1552(a)).

(10) Establishing a board of review to review discharge or dismissal of former Coast Guard members (10 U.S.C. 1553(a)).

(11) Reviewing findings of board established under section 1553(a) (10 U.S.C. 1553(b)).

(12) Reviewing findings of board established under section 1554(a) to forward requests of officers released or retired from active duty without pay for physical disability (10 U.S.C. 1554(b)).

(n) *Automatic Data Processing.* Approval authority relating to automatic data processing equipment and services as delimited by DOT 1370.2A, Procurement of Automatic Data Processing Equipment and Services, of 7.22.70.

(o) *Deepwater Ports.* The following powers and duties relating to the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524):

(1) The authority to issue, transfer, amend or renew a license for the construction and operation of a deepwater port (33 U.S.C. 1503(b)).

(2) Approval of fees charged by adjacent coastal States for use of a deepwater port and directly related land based facilities (33 U.S.C. 1504(h)(2)).

(3) Consultation with the Secretary of State relating to international actions and cooperation in the economic, trade and general transportation policy aspects of the ownership and operation of deepwater ports (33 U.S.C. 1510).

(4) Prescription of regulations for the submission of notice of the commencement of a civil suit (33 U.S.C. 1515(b)(2)).

(5) Intervention in any civil action to which the Secretary is not a party (33 U.S.C. 1515(c)).

(6) Authority to recover for damages to natural resources (33 U.S.C. 1517(i)(3)).

(7) Authority to request the Attorney General to seek the suspension or termination of a deepwater port license and to initiate a proceeding before the Interstate Commerce Commission (33 U.S.C. 1507, 1511).

(p) *Offshore Oil Pollution Compensation Fund.* The following powers and duties included in Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372):

(1) The authority to appoint three member panels to hear and decide disputes pursuant to section 307(h).

(2) The authority to refer a disputed claim to a three member panel for decision in accordance with section 307(i)(1).

(q) *Review and finality of actions by Maritime Subsidy Board.* (1) Review of any decision, report, and/or order of the Maritime Subsidy Board, as described in 46 CFR Part 202, as amended.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-128, 42 FR 22366, May 3, 1977; Amdt. 1-137, 44 FR 2395, Jan. 11, 1979; Amdt. 1-164, 46 FR 47459, Sept. 28, 1981]

§ 1.45 Delegations to all Administrators.

(a) Except as otherwise prescribed by the Secretary of Transportation, each Administrator is authorized to—

(1) Exercise the authority of the Secretary over and with respect to any personnel within their respective organizations.

(2) Exercise the authority of the Secretary as executive head of a department, under any statute, Executive order or regulation.

(3) Request the Attorney General to approve the award, compromise, or settlement of any tort claim for an amount exceeding $25,000 (28 U.S.C. 2672).

(4) Carry out the functions vested in the Secretary by section 4(f) of the Department of Transportation Act, as amended (49 U.S.C. 1653(f)).

(5) Carry out the emergency preparedness functions assigned to the Secretary by Executive Order 11490, as amended and by Executive Order

11921 and by the Federal Emergency Management Agency, General Services Administration (FEMA/GSA) as they pertain to his administration, including those relating to continuity of operations, emergency resource management, associated Federal claimant procedures, facilities protection and warfare effects monitoring and reporting, research, stockpiling, financial aid, and training.

(6) Enter into inter- and intradepartmental reimbursable agreements other than with the head of another department or agency (31 U.S.C. 686). This authority may be redelegated only to Office Directors, Regional Directors, District Commanders or other comparable levels and Contracting Officers.

(7) Determine the existence and amount of indebtedness and the method of collecting repayments from employees and members within their respective administrations and collect repayments accordingly, as provided by 5 U.S.C. 5514. Redelegation of this authority may be made only to the principal officials responsible for financial management or such officials' principal assistants.

(8) Waive claims and make refunds in connection with claims of the United States for erroneous overpayment of pay and allowances in amounts aggregating not more than $500 without regard to any repayments, and deny requests for waiver of such claims regardless of the aggregate amount of the claim, as provided by 4 CFR, Parts 91, 92, and 93. Redelegation of this authority may be made only to the level of Regional Director or District Commander.

(9) Settle and pay claims by employees for personal property losses as provided by 31 U.S.C. 241 (a) or (b), as appropriate. This authority may be redelegated only to Office Directors, Regional Directors, District Commanders or other comparable levels and to those individuals that report to the above officials.

(10) Exercise the authority of the Secretary to accept or reject internal complaints of discrimination on the basis of race, color, religion, sex, national origin, or age arising within or relating to his or her organization.

(11) Review and approve for payment any voucher for $25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(12) Authorize and approve official travel and transportation for self, subordinates, and others performing services for, or in cooperation with, his or her operating administration. This authority may be redelegated in accordance with regulations issued by the Assistant Secretary for Administration.

(13) Exercise the authority of the Secretary to make certifications, findings and determinations under the Regulatory Flexibility Act (Pub. L. 96-354) with regard to any rulemaking document for which issuance authority is delegated by other sections in this part. This authority may be redelegated to those officials to whom document issuance authority has been delegated.

(b) Except as otherwise specifically provided, each official to whom authority is granted by §§ 1.45 through 1.53 may redelegate and authorize successive redelegations of that authority within the organization under his jurisdiction.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 79-12, 44 FR 40641, July 12, 1979; Amdt. 1-157, 45 FR 83405, Dec. 18, 1980; Amdt. 1-159, 46 FR 22593, Apr. 20, 1981]

§ 1.46 Delegations to Commandant of the Coast Guard.

The Commandant of the Coast Guard is delegated authority to—

(a) Carry out the Great Lakes Pilotage Act of 1960, as amended, except the authority to enter into, revise, or amend arrangements with Canada (74 Stat. 259, 46 U.S.C. 216 et seq.).

(b) Carry out all the activities of the Coast Guard, including, but not limited to, law enforcement, safety of life and property at sea (excluding 46 U.S.C. 170 (7), (10) and (11)), aids to navigation, search and rescue, icebreaking, oceanographic research and military readiness functions (49 U.S.C. 1655(b)(1)).

(c) Carry out the following laws relating generally to water vessel anchorages, drawbridge operating, regu-

lations, obstructive bridges, pollution of the sea by oil and the locations and clearances of bridges and causeways over the navigable waters of the United States:

(1) Section 7 of the Act of March 4, 1915, as amended (38 Stat. 1053, 33 U.S.C. 471);

(2) Section 5 of the Act of August 18, 1894, as amended (28 Stat. 362, 33 U.S.C. 499);

(3) The Act of June 21, 1940, as amended (54 Stat. 497, 33 U.S.C. 511 et seq.);

(4) The Oil Pollution Act, 1961, as amended (75 Stat. 402, 33 U.S.C. 1001 et seq.);

(5) Section 9 of the Act of March 3, 1899, as amended (30 Stat. 1151, 33 U.S.C. 401);

(6) The Act of March 23, 1906, as amended (34 Stat. 84, 33 U.S.C. 491 et seq.); and

(7) The General Bridge Act of 1946, as amended (60 Stat. 847, 33 U.S.C. 525 et seq.) except sections 502(c) and 503.

(d) Carry out Reorganization Plan No. 1 of 1967, relating to ship mortgages.

(e) Request the Secretary of the Navy to build at naval shipyards Coast Guard vessels not normally or economically obtainable from private contractors (14 U.S.C. 145(a)(1)).

(f) Administer Executive Order 11459 (34 FR 5057), relating to approval of containers for transport under Customs seal.

(g) Exchange information, through the Secretary of State, with foreign governments on matters dealing with the safety of life and property at sea, other than radio communications, but not including the submission of suggestions to the Secretary of State on international collaboration and conferences (14 U.S.C. 142).

(h) Exchange personnel, vessels, facilities, and equipment with the Secretary of the Navy to facilitate operational readiness for wartime service with the Navy, and agree to undertake such assignments and functions for the mutual benefit of the Navy and Coast Guard as are necessary and advisable, except with respect to those exchanges and agreements which, in the Commandant's judgment, may have substantial political impact or adversely affect mission performance (14 U.S.C. 145(c)).

(i) Approve retention of a rear admiral on active duty for a period not exceeding one year (14 U.S.C. 290(b)).

(j) Through the Chief Counsel, U.S. Coast Guard, settle and pay claims against the United States as provided by 10 U.S.C. 2733.

(k) Award life-saving medals and military decorations (except the Medal of Honor, the Distinguished Service Medal, and the Legion of Merit) and carry out the laws and Executive orders relating to those awards (14 U.S.C. 492a, 493, 494, 496, 497, 498, 500, 501, 502; Executive Order No. 4601, Mar. 1, 1926, as amended by Executive Order No. 7786 (3 FR 39); Executive Order No. 9158 (7 FR 3541), as amended by Executive Order No. 9242A (7 FR 7874); Executive Order No. 10637 (20 FR 7025); Executive Order No. 11016 (27 FR 4139); Executive Order No. 11046 (27 FR 8575); Executive Order No. 11448 (34 FR 915)).

(l) Carry out the functions vested in the Secretary by sections 104(i), 104(j), 311(b)(6), 311(p)(6), 312, and 402(b)(6) of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 862).

(m) Carry out the functions assigned to the Secretary by sections 2, 5, and 6 of Executive Order 11735 (33 FR 21243), assigning functions under the Federal Water Pollution Control Act, as amended (86 Stat. 862).

(n) Carry out the functions vested in the Secretary by the following statutes:

(1) Federal Boat Safety Act of 1971 (85 Stat. 213);

(2) Vessel Bridge-to-Bridge Radio-Telephone Act (85 Stat. 164);

(3) Pub. L. 92-339, relating to the licensing of personnel on certain towing vessels (86 Stat. 423);

(4) Port and Tanker Safety Act of 1978 (92 Stat. 1471), except sections 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 to the extent that those sections pertain to the operation of the St. Lawrence Seaway;

(5) Sections 104 (a) and (g), 107(c), 108, 201, and 302(a) of the Marine Protection, Research, and Sanctuaries Act

of 1972 (Pub. L. 92-532) relating to ocean dumping;

(6) International Voyage Load Line Act of 1973 (Pub. L. 93-115);

(7) Intervention on the High Seas Act (Pub. L. 93-248) except section 13(a);

(8) Pub. L. 93-524 (88 Stat. 1694) which relates to waste materials on vessels (46 U.S.C. 77(e));

(9) Pub. L. 94-85 (89 Stat. 426), which relates to carriage of additional passengers on documented vessels in emergency situations;

(10)(i) Section 304(a)(1) of the Independent Safety Board Act of 1974 [49 U.S.C. 1903(a)(1)] insofar as it relates to the promulgation of joint regulations with the National Transportation Safety Board (NTSB) governing investigations of major marine casualties and casualties involving public and non-public vessels, and the conduct of accident investigations upon request of the Board;

(ii) Section 307 of the Independent Safety Board Act of 1974 (49 U.S.C. 1906) insofar as it relates to responses to NTSB recommendations regarding marine casualties;

(11) International Navigational Rules Act of 1977 (Pub. L. 95-75, 91 Stat. 308); and

(12) International Safe Container Act (Pub. L. 95-208, 91 Stat. 1475), except section 4(e);

(13) 14 U.S.C. 195, relating to instruction of foreign nationals at the Coast Guard academy;

(14) Inland Navigational Rules Act of 1980 (Pub. L. 96-591).

(o) Carry out the functions vested in the Secretary by 14 U.S.C. 475 and Executive Order 11645, 3 CFR 371 (1973), 37 FR 2923, February 10, 1972, relating to the rental of housing facilities at or near Coast Guard installations.

(p) Carry out the functions vested in the Secretary by Pub. L. 92-425 and Executive Order 11687 (37 FR 21479), relating to the Retired Serviceman's Survivor Benefit Plan.

(q) Carry out the functions vested in the Secretary by section 5 of the International Bridge Act of 1972 (Pub. L. 92-434) as it relates to navigable waterways other than the St. Lawrence River.

(r) Carry out the functions vested in the Secretary by 14 U.S.C. 657, relating to schooling and transportation to schools for dependents of Coast Guard personnel.

(s) Carry out the functions and responsibilities vested in the Secretary by the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), except as reserved by § 1.44 (o) and delegated by § 1.53(c).

(t) Carry out the functions vested in the Secretary by 49 U.S.C. 1801-1811, and 46 U.S.C. 170 to the extent they relate to regulations and exemptions governing the bulk transportation of hazardous materials that are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel carrier without mark or count, and regulations and exemptions governing ships' stores and supplies.

(u) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c) and 1809 and 1810, relating to investigations, records, inspections, penalties, and specific relief, so far as they apply to the transportation or shipment of hazardous materials by water.

(v) Carry out the functions vested in the Secretary by the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265 16 U.S.C. 1801 et seq.), except that the authority to approve seizure of a vessel may not be redelegated and shall be exercised in each instance only after consultation with the Department of State.

(w) Issue wage schedules for trades, crafts, and laboring employees in non-appropriated fund activities.

(x) Carry out the functions vested in the Secretary by 10 U.S.C. 2683 insofar as it relates to the relinquishment to a state of legislative jurisdiction of the United States over lands and interests under the control of the Coast Guard in that state.

(y) Carry out the functions and responsibilities vested in the Secretary by the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 et seq.) relating to rulemaking so far as it applies to liquefied natural gas facilities adjacent to the navigable waters of the United States: *Provided*, That such rulemaking is in accordance with the Memorandum of Understand-

ing between the Coast Guard and Materials Transportation Bureau executed on February 7, 1978, for regulation of such facilities.

(z) Carry out the functions vested in the Secretary by the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), as amended, Title III and VI of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372), and Executive Order 12123, except as reserved by § 1.44(p) and delegated by § 1.53(a)(6).

(aa) Carry out the functions vested in the Secretary by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714(i)) for lands under the administration of the U.S. Coast Guard.

(bb) Carry out the functions vested in the Secretary by the Act of September 10, 1976 (90 Stat. 1236, 46 U.S.C. 420) relating to the issuance of permits exempting specific cargo-carrying vessels operating within the State of Alaska from all or part of 46 U.S.C. 88, 391, 391a, and 404 and the regulations issued thereunder.

(cc) Carry out the requirements of section 146 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689) relating to foreign-built hovercraft in Alaska.

(dd) Exercise all functions of the General Services Administrator pertaining to the acquisition of special purpose space in urban centers, as defined in 41 CFR 101-18.102, to house U.S. Coast Guard Recruiting Offices pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and to acquire such space by firm term leases up to five (5) years in accordance with the authority contained in section 210(h) (1) of the Federal Property and Administrative Services Act of 1949, as amended. Provided, that such authority is exercised in accordance with the Memorandum of Understanding between the Department of Transportation and the General Services Administration executed on January 27, 1981, for implementation of this delegation.

(ee) Carry out all functions vested in the Secretary in any capacity by the Ocean Thermal Energy Conversion Act of 1980 (Pub. L. 96-320, August 3, 1980).

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-115, 41 FR 14519, Apr. 6, 1976; Amdt. 1-127, 42 FR 12176, Mar. 3, 1977; Amdt. 1-128, 42 FR 22366, May 3, 1977; 42 FR 46306, Sept. 15, 1977; Amdt. 1-131, 42 FR 61865, Dec. 7, 1977; Amdt. 1-133, 43 FR 5515, Feb. 19, 1978; Amdt. 1-135, 43 FR 17360, Apr. 24, 1978; 44 FR 5437, Jan. 26, 1979; Amdt. 1-138, 44 FR 10063, Feb. 16, 1979; Amdt. 97-13, 44 FR 43730, July 26, 1979; Amdt. 79-22, 45 FR 2655, Jan. 14, 1980; Amdt. 1-73, 45 FR 8993, Feb. 11, 1980; 45 FR 48630, July 21, 1980; Amdt. 1-157, 45 FR 83405, Dec. 18, 1980; Amdt. 1-160, 46 FR 23057, Apr. 23, 1981; Amdt. 1-161, 46 FR 26651, May 14, 1981; Amdt. 1-162, 46 FR 29269, June 1, 1981]

§ 1.47 Delegations to Federal Aviation Administrator.

The Federal Aviation Administrator is delegated authority to—

(a) Carry out the powers and duties transferred to the Secretary of Transportation by section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)), including those pertaining to aviation safety set forth in sections 306, 307, 308, 309, 312, 313, 314, 1101, 1105, and 1111 and titles VI, VII, IX (excluding section 902(h)) and XII of the Federal Aviation Act of 1958, as amended.

(b) Carry out title XIII of the Federal Aviation Act of 1958, as amended (72 Stat. 800; 49 U.S.C. 1531 et seq.), relating to aviation insurance.

(c) Provide for guarantees of private loans for the purchase of aircraft, including consultation with the Civil Aeronautics Board under the Act of September 7, 1957, as amended (49 U.S.C. 1324 (note)), and the Department of Transportation Act (49 U.S.C. 1655(a)(3)(A) and (B)).

(d) Administer Executive Orders 11419 and 11322 relating to prohibited aviation operations and the prohibited carriage of commodities and products to and from Southern Rhodesia. Carry out the functions vested in the Secretary by Executive Order 12183.

(e) Provide certain facilities and services to FAA employees and their dependents at remote locations (49 U.S.C. 1659).

(f) Carry out the functions vested in the Secretary by—

(1) The Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1701 et seq.), except sections 3 and 4 (49 U.S.C. 1702, 1703).

(2) Sections 208 and 209 of the Airport and Airway Revenue Act of 1970, as amended (49 U.S.C. 1742, 1742 note); and

(3) Sections 21, 22, 23(b), 24, and 25 of the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1346(a), 1348 note, 1713 note, 1356a, 1704).

(g) Carry out the function vested in the Secretary by Part B of Title II of the Clean Air Act, as amended (84 Stat. 1703), and by 49 CFR 87.7(d) as it relates to exemptions from aircraft air pollution standards.

(h) Carry out the functions of the Secretary under section 208 of the Appalachian Regional Development Act of 1965 (85 Stat. 168; 40 U.S.C. App. 208).

(i) Carry out the functions vested in the Secretary by section 902(h)(2) of the Federal Aviation Act of 1958, as amended, as it relates to enforcement of hazardous materials regulations as they apply to the transportation or shipment of such materials by air.

(j) Carry out the functions vested in the Secretary by 49 U.S.C. 1807 as it relates to the establishment of procedures for monitoring and enforcing provisions of regulations with respect to the transportation of radioactive materials on passenger-carrying aircraft.

(k) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c), 1809, and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by air.

(l) Serve, or designate a representative to serve, as Vice Chairman and alternate Department of Transportation member of the Interagency Group on International Aviation (IGIA) pursuant to interagency agreement of December 9, 1960, and Executive Order 11382, and provide for the administrative operation of the IGIA Secretariat.

(m) Carry out the powers and duties of the Secretary under the Aviation Safety and Noise Abatement Act of 1979 (94 Stat. 50) to take various regulatory and nonregulatory actions concerning aviation noise control and abatement and safety in aviation.

(Secs. 3(e), 6(c), and 9(e), Department of Transportation Act (49 U.S.C. 1652(e), 1655(c), and 1657(e)))

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975; Amdt. 1-113, 41 FR 29696, July 19, 1976, as amended by Amdt. 1-118, 41 FR 31535, July 29, 1976; Amdt. 1-122, 41 FR 48122, Nov. 2, 1976; Amdt. 1-151, 45 FR 783, Jan. 1980; Amdt. 1-157, 45 FR 83405, Dec. 18, 1980; 46 FR 9603, Jan. 29, 1981]

§ 1.48 Delegations to Federal Highway Administrator.

The Federal Highway Administrator is delegated authority to—

(a) Investigate and report on the safety compliance records of applicants seeking operating authority, or approval of transactions involving transfer of operating authority, from the Interstate Commerce Commission, and to intervene and present evidence concerning applicants' fitness in Commission proceedings under 49 U.S.C. 1653(e), so far as it relates to motor carriers.

(b) Administer the following sections of Title 23, U.S.C.:

(1)(i) 101(a); and

(ii) 101(b), (c), (d), and (e), except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(2) 103, except as it involves the substitution of non-highway public mass transit projects authorized by section (e)(4);

(3) 104, including the apportionment of funds for Federal-aid highways once Congress approves estimates submitted by the Secretary;

(4) 105, except as subsections (a) and (g) involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(5) 106, except subsections (a), (c), and (d) as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(6) 107;

(7) 108, except as it involves mass transportaton projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(8) 109, except subsections (a), (g), and (h) as they involve mass transpor-

tation projects authorized by sections 103(e) (4), 142(a)(2), or 142(c);

(9) 110, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(10) 111;

(11) 112, 113, 114, except as they involve transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(12) 115;

(13) 116, except subsections (a) and (c) as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(14) 117, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(15) 118, 119, 120;

(16) 121 and 122, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(17) 123;

(18) 124, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(19) 125, 126, and 127;

(20) 128, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(21) 129, 130, 131, 132, 134, 135, 136, 137, 138, and 139;

(22) 140, except paragraph (a) of this section, as it involved mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(23) 141;

(24) 142, except as it involves mass transportation projects authorized by subsections (a)(2) and (c) and by 103(e)(4);

(25) 143 and 144;

(26) 145, except as it involves mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(27) 146, 147, 148, 149, 150, 151, 152, 154, 155 and 156;

(28) 201 through 219 (Chapter 2);

(29) 301, 302, and 303;

(30) 304, 305, 306, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(31) 307 through 314 inclusive;

(32) 315 and 317, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c);

(33) 318 through 322, inclusive; and

(34) 323 and 324, except as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c).

(c) Administer the following laws relating generally to highways:

(1) Sections 105, 107 (c), (d), (e), 123 (a), (b), 124(c), 126 (d), (e), (f), (g), 138(c), 140, 141, 142, 143, 144, 145, 147, 148, 149, 150, 151, 152, 153, 154, 167, 171, 209, Title IV as it relates to matters within the primary responsibility of the Federal Highway Administrator under the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689); and sections 502-504, Title V of the Highway Revenue Act of 1978.

(2) Sections 103, 104, 11(b), 128(b), 131, 133(b), 135, 136, 141, 147, 149, 154, 158, 159, 160, 161, 163, 203, 206, 401, and 402 of the Federal-Aid Highway Act of 1973, as amended.

(3) The Federal-Aid Highway Act of 1970, as amended (except section 118) (84 Stat. 1713).

(4) The Federal-Aid Highway Act of 1968, as amended (82 Stat. 815);

(5) The Federal-Aid Highway Act of 1966, as amended (80 Stat. 766);

(6) The Federal-Aid Highway Act of 1962, as amended (76 Stat. 1145, 23 U.S.C. 307 note);

(7) The Federal-Aid Highway Act of 1956, as amended (70 Stat. 374);

(8) The Federal-Aid Highway Act of 1954, as amended (68 Stat. 70);

(9) The Act of September 26, 1961, as amended (75 Stat. 670);

(10) The Highway Revenue Act of 1956, as amended (70 Stat. 387, 23 U.S.C. 120 note);

(11) The Highway Beautification Act of 1965, as amended (79 Stat. 1028, 23 U.S.C. 131 et seq., notes);

(12) The Alaska Omnibus Act, as amended (73 Stat. 141, 48 U.S.C. 21 note prec.);

(13) The Joint Resolution of August 28, 1965, as amended (79 Stat. 578, 23 U.S.C. 101 et seq., notes);

(14) Section 502(c) of the General Bridge Act of 1946, as amended (60 Stat. 847, 33 U.S.C. 525(c));

(15) The Act of April 27, 1962 (76 Stat. 59);

(16) Reorganization Plan No. 7 of 1949 (63 Stat. 1070); and

(17) Sections 102(b) (except subparagraph (2)) and (c); 105 (b)(1) and (c); 141; 146; 147; and 152 of the Federal-Aid Highway Act of 1976 (Pub. L. 94-280; 90 Stat. 425).

(d) Carry out sections 831-835 of Title 18 U.S.C. relating generally to explosives and other dangerous articles, so far as they pertain to investigations, records, inspections, and penalties with respect to the transportation or shipment of hazardous materials by motor carrier.

(e) Carry out Section 226 of the Interstate Commerce Act as amended (49 U.S.C. 325), relating generally to investigation of motor vehicle sizes, weights, and services to employees.

(f) Carry out sections 204(a) (1), (2), (3), (3)(a), and (5) of the Interstate Commerce Act, as amended (49 U.S.C. 304), relating generally to qualifications and maximum hours of service of employees and safety of operation and equipment of motor carriers.

(g) Carry out sections 221(a), 221(c), and 224 of the Interstate Commerce Act, as amended (49 U.S.C. 321 et seq.), relating generally to service of process, designation of agents to receive service of process, and identification of interstate motor vehicles so far as they pertain to private carriers of property by motor vehicle and carriers of migrant workers by motor vehicle other than contract carriers.

(h) Exercise the administrative powers under the Interstate Commerce Act with respect to powers and duties pertaining to motor carrier safety transferred to the Secretary from the Interstate Commerce Commission (49 U.S.C. 1655(f)(2)(B)(ii)).

(i) Administer the following laws relating generally to the reasonableness of tolls:

(1) Section 4 of the Act of March 23, 1906, as amended (34 Stat. 85, 33 U.S.C. 494);

(2) Section 503 of the General Bridge Act of 1946, as amended (60 Stat. 847, 33 U.S.C. 526);

(3) Section 17 of the Act of June 10, 1930, as amended (46 Stat. 552, 33 U.S.C. 498a);

(4) The Act of June 27, 1930, as amended (46 Stat. 821, 33 U.S.C. 498b); and

(5) The Act of August 21, 1935, as amended (49 Stat. 670, 33 U.S.C. 503 et seq.).

(j) Carry out the functions of the Secretary under the Appalachian Regional Development Act of 1965 (79 Stat. 5; 40 U.S.C. App.) except section 208.

(k) Carry out section 212(a) of the Interstate Commerce Act, as amended (49 Stat. 555, 49 U.S.C. 312(a)); relating generally to the suspension, change, or revocation of motor carrier certificates, permits, or licensee.

(l) Carry out the Act of September 21, 1966, Pub. L. 89-599, relating to certain approvals concerned with a compact between the States of Missouri and Kansas.

(m) Carry out the law relating to the Chamizal border highway (80 Stat. 1477).

(n) Carry out the Highway Safety Act of 1966, as amended (80 Stat. 731) and Chapter 4 of Title 23 U.S.C. as amended by section 207 of the Surface Transportation Assistance Act of 1978 for highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian and bicycle safety.

(o) Exercise the authority vested in the Secretary by Section 204(b) of the Federal Railroad Safety Act of 1970 (84 Stat. 972, 45 U.S.C. 433(b)) with respect to the laws administered by the Federal Highway Administrator pertaining to highway safety and highway construction.

(p) Carry out the functions vested in the Secretary by subsection (b) (except as it relates to conducting consultations with the Administrator of the Environmental Protection Agency), and (c) of section 18 of the Noise Control Act of 1972 (Pub. L. 92-574).

(q) Carry out the functions vested in the Secretary by section 5 (as it relates to bridges, other than railroad bridges, not over navigable waters), and sections 6 and 8(a) (as they relate to all bridges other than railroad bridges) of the International Bridge Act of 1972 (Pub. L. 92-434).

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(r) Carry out the functions vested in the Secretary by the following sections of the Urban Mass Transportation Act of 1964 as amended (78 Stat. 302, 49 U.S.C. 1601 et seq.):

(1) Sections 3(a)(3), 3(e)(1), 5(g)(1), and 8 as they relate to urban planning (49 U.S.C. 1602 (a)(3) and (e)(1), 1603(a), and 1604(g)(1); and 1604(l)).

(2) Section 12(c)(11) relating to approval of boundaries of urbanized areas (49 U.S.C. 1608(c)(11));

(3) Section 18, relating to the formula grant program for non-urbanized areas, and Section 22, relating to intercity bus service.

(s) Exercise the authority vested in the Secretary by sections 101, 118, 119, 120(b), 123 and 124 of the Federal-Aid Highway Amendments of 1974 (Pub. L. 93-643, January 4, 1975; 88 Stat. 2281).

(t) Carry out the functions vested in the Secretary by 49 U.S.C. 1804(b) relating to consultation and cooperation with the Interstate Commerce Commission (ICC) concerning regulations governing the routing of hazardous materials by highway.

(u) Carry out the functions vested in the Secretary by 49 U.S.C. 1808 (a), (b), and (c), 1809 and 1810 relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by highway, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified, or sold for use in the bulk transportaton of hazardous materials by highway.

(v) Carry out the functions vested in the Secretary by sections 18 (a) and (b) (as they relate to conducting consultations with the Administrator of the Environmental Protection Agency) of the Noise Control Act of 1972 (Pub. L. 92-574, 49 U.S.C. 1431).

[Amdt. 1-157, 45 FR 83405, Dec. 18, 1980]

§ 1.49 Delegations to Federal Railroad Administrator.

The Federal Railroad Administrator is delegated authority to—

(a) Investigate and report on safety compliance records of applicants seeking railroad operating authority from the Interstate Commerce Commission, and to intervene and present evidence concerning applicants' fitness in Commission proceedings under 49 U.S.C. 1653(e), relating to railroads.

(b) Carry out the Act of September 30, 1965, as amended (79 Stat. 893, 49 U.S.C. 1631 et seq.), relating generally to high speed ground transportation, except issuance of reports required by section 13(c) (49 U.S.C. 1643(c)).

(c) Carry out the following laws relating generally to safety appliances and equipment on railroad engines and cars, and protection of employees and travelers:

(1) The Act of March 2, 1893, as amended (27 Stat. 531, 45 U.S.C. 1 et seq.);

(2) The Act of March 2, 1903, as amended (32 Stat. 943, 45 U.S.C. 8 et seq.);

(3) The Act of April 14, 1910, as amended (36 Stat. 298, 45 U.S.C. 11 et seq.);

(4) The Act of May 30, 1908, as amended (35 Stat. 476, 45 U.S.C. 17 et seq.);

(5) The Act of February 17, 1911, as amended (36 Stat. 913, 45 U.S.C. 22 et seq.);

(6) The Act of March 4, 1915, as amended (38 Stat. 1192, 45 U.S.C. 30);

(7) Reorganization Plan No. 3 of 1965 (79 Stat. 1320, 45 U.S.C. 22 note);

(8) Joint Resolution of June 30, 1906, as amended (34 Stat. 838, 45 U.S.C. 35);

(9) The Act of May 27, 1908, as amended (35 Stat. 325, 45 U.S.C. 36 et seq.);

(10) The Act of March 4, 1909, as amended (35 Stat. 965, 45 U.S.C. 37); and

(11) The Act of May 6, 1910, as amended (36 Stat. 350, 45 U.S.C. 38 et seq.).

(d) Carry out the Act of March 4, 1907, as amended (34 Stat. 1415, 45 U.S.C. 61 et seq.), relating generally to hours of service of railroad employees.

(e) Carry out the functions vested in the Secretary by section 5 of the International Bridge Act of 1972 (Pub. L. 92-434) as it relates to railroad bridges not over navigable waterways.

(f) Carry out section 25 of the Interstate Commerce Act, as amended (49 U.S.C. 26), relating generally to rail-

road safety appliances, methods, and systems.

(g) Exercise the administrative powers under the Interstate Commerce Act with respect to powers and duties pertaining to railroad safety transferred to the Secretary (49 U.S.C. 1655(f)).

(h) Operate and administer the Alaska Railroad under the Act of March 12, 1914, as amended (38 Stat. 305), and Executive Order No. 11107 (28 FR 4225 (1963)).

(i) Make individual and general changes in freight rates and passenger fares for the Alaska Railroad, without power to redelegate authority for general changes in freight rates and passenger fares.

(j) Promote and undertake research and development relating to rail matters generally (49 U.S.C. 1653(a), 1657(e)(1), 1657(n)(1), and 1657(q)(1)).

(k) Carry out the functions vested in the Secretary by the Rail Passenger Service Act, as amended, except that the Administrator shall serve as the alternate representative of the Secretary on the Board of Directors of the National Railroad Passenger Corporation only when so designated by the Secretary or Deputy Secretary.

(l) Exercise the authority vested in the Secretary by the Emergency Rail Services Act of 1970 (Pub. L. 91-663) except the authority to make findings required by section 3(a) of that Act and the authority to sign guarantees of certificates issued by trustees.

(m) Carry out the functions vested in the Secretary by the Federal Railroad Safety Act of 1970 (Title II of Pub. L. 91-458); 84 Stat. 971, 45 U.S.C. 421 et. seq.), except section 204(b) (84 Stat. 972, 45 U.S.C. 433(b)) with respect to highway, traffic, and motor vehicle safety and highway construction.

(n) Carry out the functions vested in the Secretary by the Emergency Rail Facilities Restoration Act of 1972 (Pub. L. 92-591).

(o) Carry out the functions vested in the Secretary by subsection (b) (except as it relates to conducting consultations with the Administrator of the Environmental Protection Agency) and (c) of section 17 of the Noise Control Act of 1972 (Pub. L. 92-574).

(p) Carry out the functions vested in the Secretary by sections 201(i)(3); 202(b)(7); 203, except authority to issue subpoenas; 210; 212; 213; 215; 402; 403; and 601 of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236) as amended by the Rail Transportation Improvement Act (Pub. L. 94-555).

(q) Carry out the functions vested in the Secretary by subsections 4 (h) and (i) of the Department of Transportation Act, as amended (49 U.S.C. 1653(h), (i)).

(r) Carry out the functions vested in the Secretary by 49 U.S.C. 1804(b) relating to consultation and cooperation with the Interstate Commerce Commission concerning regulations governing the routing of hazardous materials by railroad.

(s) Carry out the functions vested in the Secretary by 49 U.S.C. 1808(a), (b), and (c), 1809 and 1810, relating to investigations, records, inspections, penalties, and specific relief so far as they apply to the transportation or shipment of hazardous materials by railroad, including the manufacture, fabrication, marking, maintenance, reconditioning, repair or test of containers which are represented, marked, certified or sold for use in the bulk transportation of hazardous materials by railroad.

(t) Carry out the functions vested in the Secretary by sections 204(c); except authority to issue subpoenas; 402; 403; 502; 503; 504; 505; 506, except (c); 507; 508; 511; 512; 513; 515; 517; 606; 610; 703; 704, except (c)(1); and 705; 707; 901; 905, as applicable, of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, section 5 of the Department of Transportation Act (49 U.S.C. 1654), except authority to issue subpoenas.

(u) Carry out functions vested in the Secretary by sections 17(a) and (b) (as they relate to consultations with the Administrator of the Environmental Protection Agency) of the Noise Control Act of 1972 (Pub. L. 92-574, 49 U.S.C. 1431).

(v) Carry out the functions vested in the Secretary by the Rock Island Railroad Transition and Employee Assistance Act (Title I of Pub. L. 96-254) and by section 18 of the Milwaukee

Railroad Restructuring Act (49 U.S.C. 916).

(w) Carry out the functions vested in the Secretary by section 305 of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 745).

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-126, 41 FR 56327, Dec. 28, 1976; Amdt. 1-13, 43 FR 14021, Apr. 4, 1978; Amdt. 1-153, 45 FR 14576, Mar. 6, 1980; Amdt. 1-157, 45 FR 83407, Dec. 18, 1980; Amdt. 1-163, 46 FR 42678, Aug. 24, 1981]

§ 1.50 Delegations to National Highway Traffic Safety Administrator.

The National Highway Traffic Safety Administrator is delegated authority to—

(a) Carry out the National Traffic and Motor Vehicle Safety Act of 1966, as amended (80 Stat. 718; 15 U.S.C. 1381 et seq.).

(b) Carry out the Highway Safety Act of 1966, as amended (80 Stat. 731) including Chapter 4 of Title 23, United States Code, except for highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian and bicycle safety.

(c) Exercise the authority vested in the Secretary by section 210(2) of the Clean Air Act, as amended by section 10(b) of Pub. L. 91-604 (84 Stat. 1700).

(d) Exercise the authority vested in the Secretary by section 204(b) of the Federal Railroad Safety Act of 1970 (84 Stat. 972; 45 U.S.C. 433(b)) with respect to laws administered by the National Highway Traffic Safety Administrator pertaining to highway, traffic and motor vehicle safety.

(e) Carry out the Act of July 14, 1960, as amended (74 Stat. 526; 23 U.S.C. 313 note).

(f) Carry out the functions vested in the Secretary by the Motor Vehicle Information and Cost Savings Act of 1972, as amended (49 U.S.C. 1902 et seq.) except section 512.

(g) Carry out the functions vested in the Secretary by section 211(c) of the Highway Safety Act of 1973, Pub. L. 93-87, Title II (87 Stat. 282).

(h) Carry out the functions vested in the Secretary by section 108 of the Motor Vehicle and Schoolbus Safety Amendments of 1974 (Pub. L. 93-492, October 27, 1974, 88 Stat. 1482).

(i) Administer the following sections of Title 23, United States Code:

(1) 141, as it relates to certification of the enforcement of speed limits; and

(2) 154(a), (b), and (d).

(j) Carry out the functions vested in the Secretary by section 1(a) of Executive Order 11912.

(k) Carry out sections 129(g), 170, 202(4), (10), 206, 213, and Title IV, of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689) with respect to matters under the primary jurisdiction of the National Highway Traffic Safety Administrator.

(l) Ensure the prohibition of expenditures of funds for passive restraints systems as required by the Surface Transportation Assistance Act of 1978 are carried out.

[Amdt. 1-157, 45 FR 83407, Dec. 18, 1980]

§ 1.51 Delegations to Urban Mass Transportation Administrator.

The Urban Mass Transportation Administrator is delegated authority to exercise the functions vested in the Secretary by:

(a) The Urban Mass Transportation Act, as amended (78 Stat. 302, 49 U.S.C. 1601 et seq.), except sections 18 and 22.

(b) Section 1 of Reorganization Plan No. 2 of 1968 (84 Stat. 1369).

(c) Section 10 of the Urban Mass Transportation Assistance Act of 1970, Pub. L. 91-453, 84 Stat. 962, 968).

(d) Sections 3 and 9 through 12 of the National Capital Transportation Act of 1969, as amended (Pub. L. 91-143, 83 Stat. 320).

(e) The following sections of Title 23, United States Code:

(1) 103 as it involves the withdrawal of Interstate routes and the substitution of non-highway public mass transit projects authorized by subsection (e)(4);

(2) 101(a) as it involves approval of boundaries of urban and urbanized areas, 104(f)(4), 105(d), 106(b) as it in-

volves the Federal-aid urban system, and 134; and

(3) 101 (b), (c), (d), and (e); 105 (a) and (g); 106 (a), (c) and (d); 108; 109 (a), (g), and (h); 110; 112; 113; 114; 116 (a) and (c); 117; 121; 122; 124; 128; 140(a); 142; and 145 as they involve mass transportation projects authorized by sections 103(e)(4), 142(a)(2), or 142(c).

(f) Sections 140, 146, 147, 164 and 165 of the Federal-Aid Highway Act of 1973, as amended (Pub. L. 93-87, Title I, 87 Stat. 250; Pub. L. 93-643, 88 Stat. 2281).

(g) Section 813 of the Housing and Community Development Act of 1974 (Pub. L. 93-383).

(h) Section 107 of the National Mass Transportation Assistance Act of 1974 (Pub. L. 93-503, November 26, 1974).

(i) Title II of the National Mass Transportation Assistance Act of 1974 (Pub. L. 93-503, November 26, 1974), except sections 204 and 205.

(j) Sections 804, insofar as it relates to 45 U.S.C. 744(e)(5); and 805, as applicable, of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210).

(k) Section 148 of the Federal-Aid Highway Act of 1976 (Pub. L. 94-280, 90 Stat. 425).

(l) The following sections of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689): 155, 316, 320, and Title IV (as it relates to matters within the primary responsibility of the Urban Mass Transportation Administrator).

[Amdt. 1-157, 45 FR 83408, Dec. 18, 1980]

§ 1.52 Delegations to Saint Lawrence Seaway Development Corporation Administrator.

The Administrator of the Saint Lawrence Seaway Corporation is delegated authority to—

(a) Carry out the functions vested in the Secretary by sections 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of the Port and Tanker Safety Act of 1978 (92 Stat. 1471) as they relate to the operation of the St. Lawrence Seaway.

(b) Carry out the functions vested in the Secretary by section 5 of the International Bridge Act of 1972 (Pub. L. 92-434) as it relates to the St. Lawrence River.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-138, 44 FR 10064, Feb. 16, 1979; 45 FR 48630, July 21, 1980]

§ 1.53 Delegations to Research and Special Programs Administrator.

The Administrator of the Research and Special Programs Administration is delegated authority to exercise powers and perform duties, including duties under the specified statutes as follows:

(a) *Pipelines.* (1) Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671, et seq.).

(2) Mineral Leasing Act, as amended (Pub. L. 93-153, 30 U.S.C. 185).

(3) Deepwater Port Act of 1974 (Pub. L. 93-627, 33 U.S.C. 1501, et seq.) relating to the establishment, enforcement and review of regulations concerning the safe construction, operation or maintenance of pipelines on Federal lands and the Outer Continental Shelf (33 U.S.C. 1520).

(4) Section 5 of the International Bridge Act of 1972 (Pub. L. 92-434, 33 U.S.C. 535) as it relates to pipelines not over navigable waterways.

(5) Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 et seq.).

(6) Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) as amended, with respect to establishment, enforcement and review of regulations concerning pipeline safety.

(b) *Hazardous materials.* (1) Sections 101-112 of the Hazardous Materials, Transportation Safety Act of 1974 (49 U.S.C. 1801-1811), except as delegated by §§ 1.46(t), 1.47(j), 1.48(u), and 1.49(s).

(2) Section 170 (7), (10), and (11) of title 46, United States Code, except as delegated by § 1.46(t).

(3) Serves as the Department's point of contact and consults with the Environmental Protection Agency on matters arising under section 3003 of the Resources Conservation and Recovery Act (42 U.S.C. 6923) and section 9 of the Toxic Substances Control Act (15 U.S.C. 2608).

(4) Sections 601(c) and 902(h)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1421 and 1472(h)(1), respectively), as they relate to regulations governing the transportation of hazardous materials by air.

(c) *Passenger and Cargo Security.* (1) Serve as the Department's point of contact in relationships with Government, state, regional, local and private groups and organizations in matters relative to the Department-wide program for enhancing the safety and security of passengers and cargo in transit.

(d) *Intermodal transport.* (1) Section 4(e) of the International Safe Container Act (Pub. L. 95-208, 91 Stat. 1475).

(e) [Reserved]

(f) *Working Capital Fund for Financing the Activities of the Transportation Systems Center.*

(1) Section 207 of Pub. L. 96-254 (49 U.S.C. 1657(r)), authorizing the Secretary to establish a working capital fund for financing the activities of the Transportation Systems Center.

[Amdt. 1-130, 43 FR 5516, Feb. 9, 1978, as amended by Amdt. 1-136, 43 FR 17360, Apr. 24, 1978; Amdt. 1-137, 44 FR 2395, Jan. 11, 1979; Amdt. 1-153, 45 FR 14576, Mar. 6, 1980; Amdt. 1-158, 46 FR 10919, Feb. 5, 1981]

§ 1.54 Delegations to all Secretarial Officers.

(a) This section sets forth general delegations to the Deputy Secretary, the Deputy Under Secretary, the General Counsel, the Inspector General and the Assistant Secretaries.

(b) Each officer named in paragraph (a) of this section is delegated authority to—

(1) Redelegate and authorize successive redelegations of authority granted by the Secretary within their respective organizations, except as limited by law or specific administrative reservation, including authority to publish those redelegations in Appendix A of this part.

(2) Authorize and approve official travel (except foreign travel) and transportation for themselves, their subordinates, and others performing services for, or in cooperation with, the Office of the Secretary. This authority may be redelegated in accordance with regulations issued by the Assistant Secretary for Administration.

(3) Communicate directly with chairmen of Field Coordination Groups provided such communications are largely informational in character and do not conflict with program responsibilities of the operating administrations.

(4) Establish ad hoc committees for specific tasks within their assigned staff area.

(5) Establish, modify, extend, or terminate standing committees within their specific areas of responsibility when directed or authorized to do so by the Secretary.

(6) Designate members of interagency committees when such committees are specifically concerned with responsibilities of direct interest to their office.

(7) Exercise the following authorities with respect to executive level positions (GS-16, 17, or 18 or equivalent) within their respective areas of responsibility:

(i) Determine how executive level positions will be filled; i.e., by reassignment, promotion, appointment.

(ii) Establish selection criteria to be used in identifying eligible candidates.

(iii) Confer with the Administrators on selection criteria and candidates for an executive level position that is a counterpart of an activity or position in the Office of the Secretary.

(iv) Recommend final selection for executive level positions, subject to review by the Executive Committee of the Departmental Executive Personnel Board and approval by the Secretary and the Civil Service Commission.

(v) Serve as ad hoc member of the Departmental Executive Personnel Board at the call of the Chairman and serve on the Board's Executive Committee whenever matters involving their respective offices or a functional counterpart thereof in an operating administration are presented to the Executive Committee for its consideration.

(8) Enter into inter- and intra-departmental reimbursable agreements other than with the head of another department or agency (31 U.S.C. 686). This authority may be redelegated only to office directors or other comparable levels and to contracting officers.

(9) Administer and perform the functions described in their respective functional statements.

(10) Exercise the authority of the Secretary to make certifications, findings and determinations under the Regulatory Flexibility Act (Pub. L. 96-354) with regard to any rulemaking document for which issuance authority is delegated by other sections in this part. This authority may be redelegated to those officials to whom document issuance authority has been delegated. (49 U.S.C. 1657(e)(1)).

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-114, 41 FR 1288, Jan. 7, 1976; Amdt. 1-157, 45 FR 83408, Dec. 18, 1980; Amdt. 1-159, 46 FR 22593, Apr. 20, 1981]

§ 1.55 Delegations to Deputy Secretary.

The Deputy Secretary may exercise the authority of the Secretary except where specifically limited by law, order, regulations, or instruction of the Secretary. In addition, the Deputy Secretary is delegated authority to—

(a) Exercise executive control over the Departmental Planning-Programming-Budgeting System.

(b) Serve as Chairman of the Departmental Executive Personnel Board and its Executive Committee.

(c) Originate direct correspondence to chairmen of Field Coordination Groups on overall Departmental matters.

(d) Approve the establishment, modification, extension, or termination of:

(1) Department-wide (intra-department) committees affecting more than one program.

(2) OST-sponsored interagency committees.

(3) All advisory committees (including industry advisory committees) except those sponsored by field activities of the operating administrations.

(e) Approve the designation of:

(1) Departmental representatives and the chairman for interagency committees sponsored by the Office of the Secretary.

(2) Departmental representatives on all advisory committees except those sponsored by a field component of one of the operating administrations or the Materials Transportation Bureau.

(3) Departmental members for international committees.

(f) Authorize and approve official travel, including foreign travel, and transportation for himself, his subordinates and others performing services for or in cooperation with the Office of the Secretary.

(g) Serve as the representative of the Secretary on the board of directors of the National Railroad Passenger Corporation and carry out the functions vested in the Secretary as a member of the board by section 303 of the Rail Passenger Service Act of 1970 (84 Stat. 1330).

(h) Serve as the representative of the Secretary as incorporator, member of the acting board of directors, member of the board of directors, and member of the executive committee of the board of directors, of the United States Railway Association and when so serving carry out the functions vested in the Secretary in each capacity by Title II of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236), as amended.

(i) Serve as the representative of the Secretary as incorporator, member of the interim board of directors established by section 301(c) of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236), and member of the board of directors, of the Consolidated Rail Corporation and when so serving carry out the functions vested in the Secretary in each capacity by Title III of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236).

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-114, 41 FR 1288, Jan. 7, 1976; Amdt. 1-116, 41 FR 20680, May 20, 1976; Amdt. 1-126, 41 FR 56327, Dec. 28, 1976; Amdt. 1-157, 45 FR 83408, Dec. 18, 1980]

§ 1.56 Delegations to Assistant Secretary for Policy and International Affairs.

The Assistant Secretary for Policy and International Affairs is delegated authority to—

(a) Establish policy and maintain oversight of implementation of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4327) within the Department of Transportation.

(b) Oversee the implementation of section 4(f) of the Department of Transportation Act of 1969 (49 U.S.C.

1653) and concur in determinations under section 4(f) for certain major project actions.

(c) Represent the Secretary of Transportation on various interagency boards, committees, and commissions, to include: Architectural and Transportation Barriers Compliance Board; Advisory Council on Historic Preservation; Migratory Bird Conservation Commission; National Highway Safety Advisory Committee; Interagency Committee on Emergency Medical Services; the Federal Council on the Arts and the Humanities; and the Trade Policy Review Group.

(d) Except with respect to proceedings under section 4(e) of the Department of Transportation Act (80 Stat. 934) relating to safety fitness of an applicant, decide on requests to intervene or appear before administrative agencies to present the views of the Department subject to concurrence by the General Counsel.

(e) Carry out the functions of the Secretary pertaining to aircraft with respect to Transportation Orders T-1 and T-2 (32A CFR, Chapter VII) under the Act of September 8, 1950, as amended (64 Stat. 798, 50 U.S.C. App. 2061 et seq.) and Executive Order No. 10480.

(f) Serve as Department of Transportation member of the Interagency Group on International Aviation and, pursuant to Executive Order No. 11382, serve as Chair of the Group.

(g) Serve as second alternate representing the Secretary of Transportation to the Water Resources Council, as mandated under the Department of Transportation Act of 1966, Pub. L. 89-670 and to the Trade Policy Committee as mandated by Reorganization Plan No. 3 of 1979 and Executive Order No. 12188.

(h) Carry out the functions vested in the Secretary by section 656 of the Department of Energy Organization Act which pertains to planning and implementing energy conservation matters with the Department of Energy. Serves as the Department's principal conservation officer.

[Amdt. 1-157, 45 FR 83408, Dec. 18, 1980]

§ 1.57 Delegations to General Counsel.

The General Counsel is delegated authority to—

(a) Conduct all rule-making proceedings, except the issuance of final rules, under specific laws relating generally to standard time zones and daylight saving (advanced standard) time.

(b) Determine the practicability of applying the standard time of any standard time zone to the movements of any common carrier engaged in interstate or foreign commerce and issue operating exceptions in any case in which the General Counsel determines that it is impractical to apply the standard time.

(c) Provide and coordinate the Department's counseling service to employees on questions of conflict of interest and other matters of legal import covered by Departmental regulations on employee responsibility and conduct. Assure that counseling and interpretations on these matters are available to designated Deputy Counselors of the Department. Serve as the Department's designee to the Civil Service Commission on these matters.

(d) Serve as the alternate representative of the Secretary on the Board of Directors of the National Railroad Passenger Corporation when so designated by the Secretary or Deputy Secretary and carry out the functions vested in the Secretary as a member of the board by section 303 of the Rail Passenger Service Act of 1970 (84 Stat. 1330).

(e) Review and take final action on referrals of the findings of the Secretary's Board for the Correction of Military Records of the Coast Guard and the Coast Guard Board for the Review of Discharges and Dismissals.

(f) Approve vacation of suspension of dismissal of military personnel (10 U.S.C. 872(b)).

(g) Grant permission, under specific circumstances, to deviate from a policy or procedure prescribed by Part 9 of the regulations of the Office of the Secretary (Part 9 of this subtitle) with respect to testimony of OST employees as witnesses in legal proceedings, the serving of legal process and pleadings in legal proceedings involving the Secretary or his Office, and the pro-

duction of records of that Office pursuant to subpoena.

(h) Prepare proposed Executive orders and proclamations (including transmittal documents), effect appropriate Departmental coordination, and determine whether the transmittal to the Office of Management and Budget should be submitted over the Secretary's signature or the General Counsel's.

(i) Emboss and affix the official Departmental seal to appropriate documents and other materials, for all purposes for which authentication by seal is required.

(j) Except with respect to proceedings under section 4(e) of the Department of Transportation Act (80 Stat. 934) relating to safety fitness of an applicant, decide on requests to intervene or appear before courts or agencies to present the views of the Department, subject to the concurrence of other interested staff elements in the Office of the Secretary.

(k) Exercise the authority delegated to the Department by the Assistant Attorney General, Land and Natural Resources Division, in his order of October 2, 1970, to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of the Department. Redelegation and successive redelegations of this authority may only be made to attorneys within the Department.

(l) Issue regulations making editorial changes or corrections in the Regulations of the Office of the Secretary.

(m) Review and take final action on applications for reconsideration of initial decisions not to disclose unclassified records of the Office of the Secretary requested under 5 U.S.C. 552(a)(3).

(n) Consider, ascertain, adjust, determine, compromise and settle for an amount not exceeding $25,000, any tort claim arising from the activities of any employee of the Office of the Secretary. Request the approval of the Attorney General for any such award, compromise, or settlement in excess of $25,000 (28 U.S.C. 2672).

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-116, 41 FR 20680, May 20, 1976; Amdt. 1-126, 41 FR 56327, Dec. 28, 1976; Amdt. 79-16, 44 FR 47937, Aug. 16, 1979. Redesignated and amended by Amdt. 1-157, 45 FR 83408, Dec. 18, 1980]

§ 1.58 Delegations to Assistant Secretary for Budget and Programs.

The Assistant Secretary for Budget and Programs is delegated authority to—

(a) Exercise day-to-day operating management responsibility over the Office of Programs and Evaluation and the Office of Budget.

(b) Direct and manage the Departmental planning, evaluation, and budget activities.

(c) Request apportionment or reapportionment of funds by the Office of Management and Budget, provided that no request for apportionment or reapportionment which anticipates the need for a supplemental appropriation shall be submitted to the Office of Management and Budget without appropriate certification by the Secretary.

(d) Issue allotments or allocations of funds to components of the Department.

(e) Authorize and approve official traver and transportation for staff members of the Immediate Office of the Secretary including authority to sign and approve related travel orders and travel vouchers, but not including requests for overseas travel.

(f) Issue monetary authorizations for use of reception and representation funds.

(g) Act for the Secretary and Deputy Secretary with respect to certain budgetary and administrative matters relating to the Immediate Office of the Secretary.

[Amdt. 1-130, 42 FR 58754, Nov. 11, 1977. Redesignated by Amdt. 1-157, 45 FR 83409, Dec. 18, 1980]

§ 1.59 Delegations to Assistant Secretary for Administration.

The Assistant Secretary for Administration is delegated authority for the following—

(a) *Procurement.* (1) Exercise procurement authority with respect to requirements of the Office of the Secretary.

(2) Make the required determinations with respect to mistakes in bids relative to sales of personal property conducted by the Office of the Secretary without power of redelegation.

(3) Carry out the functions vested in the Secretary by sections 3 and 4(b) (as appropriate) of Executive Order 11912.

(b) *Personnel.* (1) Administer and conduct personnel management activities for the Office of the Secretary, except as delegated to the Director, Transportation Systems Center, including but not limited to:

(i) Establishment and classification of positions at GS–1 through GS–15;

(ii) Effectuation of personnel actions to appoint, promote, demote, reassign, separate, and remove employees;

(iii) Establishment of training programs and approval of training expenses, including full-time training in excess of 90 days' duration for employees at the Transportation Systems Center; and

(iv) Evaluation of trades, labor, and manual skills positions and approval of pay schedules therefor.

(2) Administer oaths incident to entrance on duty in the Federal service and any other oath which might be required by law in connection with employment.

(3) Coordinate Departmental requests for employment limitation relief with appropriate Secretarial Officers prior to submission to the Deputy Secretary for action, advise the Deputy Secretary on priorities, and act on requests for temporary relief through granting position advances from the Secretary's reserve pool for a period not to exceed 60 days.

(4) Exercise emergency authority to hire without the prior approval of the Deputy Secretary normally required by Departmental procedures implementing general employment limitations when in the judgment of the Assistant Secretary immediate action is necessary to effect the hire and avoid the loss of a well-qualified job applicant, and for similar reasons.

(5) Review proposals of the Office of the Secretary for each new appointment or transfer to—

(i) Verify the essentiality of the position, and

(ii) Assure compliance with the Action Plan for Equal Opportunity of the Office of the Secretary.

(6) Approve periodic accession plans for the Office of the Secretary.

(7) Serve as Vice Chairman of the Departmental Executive Personnel Board and its Executive Committee.

(8) Issue final interpretations for the Department and its administrations on matters arising under section 7117 of Title VII of the Civil Service Reform Act of 1978.

(9) Develop, coordinate, and issue wage schedules for Department employees under the Federal Wage System, except as delegated to the Commandant of the Coast Guard at § 1.46.

(c) *Finance.* (1) Administer the financial and fiscal affairs of the Office of the Secretary (other than those for which the Assistant Secretary for Budget and Programs is responsible), in accordance with 31 U.S.C. 66a.

(2) Designate to the Treasury Department certifying officers and designated agents for the Office of the Secretary, except at the Transportation Systems Center, and imprest fund cashiers for the Departmental headquarters.

(3) In accordance with 31 U.S.C. 82a-1, grant or recommend relief from accountability for losses or deficiencies of disbursing officers, cashiers, or other accountable officers as follows:

(i) Grant relief for losses or deficiencies of less than $500 for which charges or exceptions have not been raised by the General Accounting Office.

(ii) Recommend relief by the Comptroller General for all other losses or deficiencies.

(4) Settle and pay claims by employees of the Office of the Secretary, except at the Transportation System Center, for personal property losses, as provided by 31 U.S.C. 241(b).

(5) Waive claims and make refunds in connection with claims for erroneous overpayment of pay and allowances to an employee of the Office of the Secretary in amounts aggregating not more than $500 without regard to any repayments, and deny requests for

waiver of such claims regardless of the aggregate amount of the claim, as provided by 4 CFR, Parts 91, 92, and 93. This authority may be redelegated only to the Director of Administrative Operations.

(6) Compromise, suspend collection action on, or terminate claims of the United States not exceeding $20,000 which are referred to, or arise out of the activities of, the Office of the Secretary.

(7) Determine the existence and amount of indebtedness and the method of collecting repayments from employees of the Office of the Secretary and collect repayment accordingly, as provided by 5 U.S.C. 5514. This authority may be redelegated only to the Chief, Accounting Operations Division.

(8) Sign Budget Execution Reports required by OMB Circular A-34, for the Office of the Secretary.

(9) Review and approve for payment any voucher for $25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(d) *Special funds.* Except as otherwise delegated, establish or operate, or both, such special funds as may be required by statute or by administrative determination. This includes such special funds as the Working Capital Fund (49 U.S.C. 1657(j)).

(e) *Security.* (1) Represent the Secretary on the National Communications Security Committee and Interdepartmental Committee on Internal Security.

(2) Issue identification media "by direction of the Secretary".

(3) Classify information in the interests of national defense.

(4) Take certain classified actions on behalf of the Department in connection with counter-audio programs.

(5) Authorize exceptions to investigative standards for National Defense Executive Reservists.

(6) Determine when emergencies, other than attack on the United States, justify activation of Personnel Security Regulations issued by the Secretary.

(7) Approve exceptions to the Personnel Security Regulations issued by the Secretary.

(8) Request the office of Personnel Management to modify investigative requirements in other areas.

(f) *Printing.* (1) Request approval of the Joint Committee on Printing, Congress of the United States, for any procurement or other action requiring Committee approval.

(2) Certify the necessity for Departmental periodicals and request approval of the Director of the Office of Management and Budget (OMB Circular No. A-3 Revised as of Sept. 8, 1960).

(g) *Document authentication.* Emboss and affix the official Departmental seal to appropriate documents and other materials, for all purposes for which authentication by seal is required.

(h) *Reports.* Process requests for Office of Management and Budget clearance of reports covered by the Federal Reports Act of 1942.

(i) *Foreign travel.* Review written requests for modification to the Department's foreign travel plan approved by the Office of Management and Budget.

(j) *Administrative/Management matters at the Transportation Systems Center.* Provide guidance and assistance to the Transportation Systems Center on all administrative/management problems (as distinguished from purely technical matters) and make recommendations to the Deputy Secretary for their disposition.

(k) *Equal Employment Opportunity.* Exercise the authority of the Secretary to accept or reject internal complaints of discrimination on the basis of race, color, religion, sex, national origin, or age arising within or relating to the Office of the Secretary.

(l) *Building Management.* Carry out the functions vested in the Secretary by sections 1(b) and 4(b) (as appropriate) of Executive Order 11912.

(m) *Privacy.* Issue notices of Department of Transportation systems of records as required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), (11)).

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-114, 41 FR 1288, Jan. 7, 1976; Amdt. 1-118, 41 FR 35849, Aug. 25, 1976; Amdt. 1-122, 41 FR 45011, Oct. 14, 1976; Amdt. 1-126, 42 FR 22366, May 3, 1977; Amdt. 79-16, 44 FR 47937, Aug. 16,

1979; Amdt. 1-157, 45 FR 83409, Dec. 18, 1980]

§ 1.60 [Reserved]

§ 1.61 Delegations to Assistant Secretary for Governmental Affairs.

The Assistant Secretary for Governmental Affairs is delegated authority to:

(a) Establish procedures for responding to Congressional correspondence.

(b) Serve as the Department's point of contact in relationships with public and private organizations and groups devoted to consumer and community services or affairs.

(c) Serve as coordinator for intra-Departmental consumer affairs programs.

[Amdt. 1-157, 45 FR 83409, Dec. 18, 1980]

§ 1.62 Delegations to the Director of Small and Disadvantaged Business Utilization.

The Director of Small and Disadvantaged Business Utilization is delegated authority to:

(a) Exercise Departmental responsibility for the implementation and execution of functions and duties under sections 8 and 15 of the Small Business Investment Act, as amended (15 U.S.C. 637 and 644).

(b) Carry out the functions vested in the Secretary by section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.

[Amdt. 1-157, 45 FR 83409, Dec. 18, 1980]

§ 1.63 Delegations to Director of Public Affairs.

The Director of Public Affairs is delegated authority to—

(a) Except for reviewing and taking final action on applications for reconsideration of initial decisions not to disclose records of the Office of the Secretary requested under 5 U.S.C. 552(a)(3), administer regulations and procedures governing public access to the unclassified records of the Office of the Secretary, and issue supplementary policies and procedures to insure uniform Departmental implementation of related Secretarial orders and regulations.

(b) Monitor the overall public information program and review and approve Departmental informational materials having policy-making ramifications before they are printed and disseminated.

(c) Carry out the functions vested in the Secretary by section 4(b) (as appropriate) of Executive Order 11912.

(d) Carry out the functions to promote carpooling and vanpooling which were vested in the Federal Energy Administration by Section 381(b)(1)(B) of the Energy Policy and Conservation Act and transferred to the Department of Transportation by section 310 of the Department of Energy Organization Act of 1977.

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-118, 41 FR 35849, Aug. 25, 1976; Amdt. 1-157, 45 FR 83409, Dec. 18, 1980]

§ 1.64 Delegations to Director of Transportation Research and Technology.

The Director of Transportation Research and Technology is delegated authority to carry out the Department of Transportation Act of 1966, as amended (80 Stat. 931), specifically sections 2 and 4, with respect to the promotion of research and development relating to transportation.

[Amdt. 1-157, 45 FR 83409, Dec. 18, 1980]

§ 1.65 Authority to classify information.

The following delegations of authority appear in Part 8:

(a) E.O. 12065 confers upon the Secretary of Transportation authority to originally classify information as SECRET and CONFIDENTIAL with further authorization to delegate this authority. (No official of the Department of Transportation has authority to originally classify information as TOP SECRET.)

(b) The following delegations of authority, which may not be redelegated, are hereby made:

(1) *Office of the Secretary (OST).* The Director of Investigations and Security.

(2) *U.S. Coast Guard.* The Commandant; Chief, Office of Operations.

(3) *Federal Aviation Administration.* The Administrator; Director of Investigations and Security.

(c) At such time as Defense Readiness condition Number Two or higher emergency condition may be declared, authority to originally classify information as Secret or Confidential is automatically delegated to the officials named below. This authority, which may not be redelegated, is automatically cancelled when Defense Readiness Condition Number Three or lower emergency level is declared.

(1) *OST.* Deputy Secretary; Assistant Secretary for Policy and International Affairs; Assistant Secretary for Administration.

(2) *USCG.* Vice Commandant; Chief of Staff; Commander, Atlantic Area; Commander, Pacific Area; Commanders, Coast Guard Districts; Commander, Coast Guard Activities Europe; Chief, Intelligence and Security Division.

(3) *FAA.* Deputy Administrator; Directors, FAA Regions and Centers.

(d) Although the delegations of authority are expressed above in terms of positions, the authority is personal and is vested only in the individual occupying the position. The authority may not be exercised "by direction of" a designated official. The formal appointment or assignment of an individual to one of the identified positions or a designation in writing to act in the absence of one of these officials, however, conveys the authority to originally classify information.

(e) Previous delegations of authority to Department of Transportation officials to originally classify information as Secret and Confidential are hereby rescinded.

[Amdt. 1-157, 45 FR 83409, Dec. 18, 1980]

§ 1.66 Delegations to Maritime Administrator.

With the exception of those authorities delegated to the Commandant of the Coast Guard in § 1.46(b) and (d), and the Maritime Subsidy Board in section 1.67 of this part, and to the extent authority has been vested in the Secretary of Transportation under Pub. L. 97-31 or subsequent statutes, the Maritime Administrator is delegated authority to:

(a) Carry out sections 9, 12, 14a, 21a, 37, 40, 41, and 42 of the Shipping Act, 1916, as amended (46 U.S.C. 801 et seq.);

(b) Carry out the Merchant Marine Act, 1920, as amended (46 U.S.C. 861 et seq.), including the Ship Mortgage Act, 1920, as amended (46 U.S.C. 921 et seq.);

(c) Carry out the Merchant Marine Act, 1928, as amended (46 U.S.C. 891 et seq.);

(d) Carry out section 7 of the Intercoastal Shipping Act, 1933, as amended (46 U.S.C. 843 et seq.);

(e) Carry out the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 et seq.); except the authority delegated to the Administrator of the National Oceanic and Atmospheric Administration relating to the establishment of capital construction fund agreements under section 607 thereof and the granting of financing guarantees under Title XI thereof, with respect to vessels in the fishing trade or industry;

(f) Carry out the Merchant Ship Sales Act of 1946, as amended (50 U.S.C. App. 1735 et seq.);

(g) Carry out the Suits in Admiralty Act (1920), as amended (46 U.S.C. 741 et seq.);

(h) Carry out the Civilian Nautical School Act, 1940 (46 U.S.C. 1331 et seq.);

(i) Carry out the Act of June 2, 1951 (46 U.S.C. 1241a) regarding the "Vessel Operations Revolving Fund";

(j) Carry out the Act of August 9, 1954 (50 U.S.C. 196 et seq.) commonly called the Emergency Foreign Vessels Acquisition Act;

(k) Carry out the Act of July 24, 1956 (46 U.S.C. 249 et seq.) commonly called the Merchant Marine Medals Act of 1956;

(l) Carry out the Maritime Academy Act of 1958, as amended (46 U.S.C. 1381 et seq.);

(m) Carry out the Act of May 16, 1972, as amended (86 Stat. 140) authorizing sale or purchase of certain passenger vessels,

(n) Carry out the Act of August 22, 1972 (86 Stat. 618) authorizing sale of Liberty ships for use as artificial reefs,

(o) Carry out section 717 of the Act of October 26, 1972 (86 Stat. 1184)

commonly known as the Department of Defense Appropriations Act, 1973, and similar subsequent enactments, with respect to transferring or otherwise making available vessels under the jurisdiction of the Maritime Administration to another Federal agency or, similarly, accepting vessels from another Federal agency,

(p) Carry out Executive Order 10480, as amended, and Executive Order 11490, as amended, with respect to defense mobilization and emergency preparedness of coastwise, intercoastal, and overseas shipping, ports and port facilities, ship construction, conversion and repair, and support functions related thereto.

(q) Exercise the authority delegated by the Administrator of the General Services Administration, dated August 15, 1967, to appoint uniformed guards as special police officers, with such powers as are conferred in the Act of June 1, 1948 (62 Stat. 281), as amended, for protection duties on those parcels of property at the United States Merchant Marine Academy, Kings Point, New York, which are not protected by General Services Administration guards, and over which the Federal Government has exclusive or concurrent jurisdiction,

(r) Carry out the responsibilities of the National Shipping Authority (initially established by the Secretary of Commerce effective March 13, 1951) in the capacity of Director, National Shipping Authority,

(s) Carry out the Maritime Education and Training Act of 1980 (46 U.S.C. 1295), as amended,

(t) Carry out all other activities previously vested in the Secretary of Commerce and transferred pursuant to Pub. L. 97-31.

[Amdt. 1-164, 46 FR 47459, Sept. 28, 1981]

§ 1.67 Delegations to Maritime Subsidy Board.

(a) The Maritime Subsidy Board is delegated authority to:

(1) Carry out all functions previously vested in the Secretary of Commerce pursuant to section 105(1) (except the last proviso thereto), section 105(2), and, insofar as applicable to these functions, section 105(3) of Reorganization Plan No. 21 of 1950, and section 202(b)(1) of Reorganization Plan No. 7 of 1961, except investigations, hearings and determinations, including changes in determinations, with respect to minimum manning scales, minimum wage scales, and minimum working conditions referred to in section 301(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101 et seq.).

(2) Carry out all functions previously vested in the Secretary of Commerce pursuant to section 103(e) of Reorganization Plan No. 7 of 1961 and section 202(b)(2) (except requiring the filing of reports, accounts, records, rates, charges, and memoranda under section 21 of the Shipping Act, 1916, as amended, and making reports and recommendations to Congress) and section 202(b)(3) of Reorganization Plan No. 7 of 1961, insofar as said functions relate to the functions described in paragraph (a)(1) of this section.

(3) Execute and sign, by and through any member of the Board or the Secretary or an Assistant Secretary of the Board, contracts and other documents authorized or approved by the Board pursuant to paragraphs (a)(1) and (a)(2) of this section. The execution of such contracts or documents may be attested, under the seal of the Department of Transportation, by the Secretary or an Assistant Secretary of the Maritime Subsidy Board.

(b) The Maritime Subsidy Board may exercise other authorities of the Secretary of Transportation as applicable to performing the functions assigned to the Board in this part.

(c) The Board is composed of the Maritime Administrator, the Deputy Maritime Administrator, and the Chief Counsel of the Administration, and during a vacancy in any one of those offices, the person acting in such capacity shall be a member of the Board, unless the Secretary of Transportation designates another person. In case there still is a vacancy in the Board or in the absence or disability of one of its members, the Secretary of the Maritime Administration and Maritime Subsidy Board, or any other persons designated by the Secretary of Transportation, shall act as a member or members of the Board.

Each member of the Board, while serving in that capacity, shall act pursuant to direct authority from the Secretary of Transportation and exercise judgment independent of authority otherwise delegated to the Maritime Administrator. The Maritime Administrator or the Acting Maritime Administrator serves as Chairperson of the Board. The concurring votes of two members shall be sufficient for the disposition of any matter which may come before the Board.

(d) The Chairperson of the Maritime Subsidy Board may make use of officers and employees of the Maritime Administration to perform activities for the Board. Employees of the Maritime Administration may be designated as the Secretary or Assistant Secretaries of the Board.

[Amdt. 1-164, 46 FR 47460, Sept. 28, 1981]

Appendix A—Delegations and Redelegations by Secretarial Officers

1. Director of Budget. The Assistant Secretary for Budget and Programs has redelegated to the Director of Budget authority to—

(a) Request apportionment and reapportionment of funds by the Office of Management and Budget, provided that no request for apportionment or reapportionment which anticipates the need for a supplemental appropriation shall be submitted to the Office of Management and Budget without appropriate certification by the Secretary.

(b) Issue allotments or allocations of funds to components of the Department.

2. *Chief Counsel, U.S. Coast Guard.* (a) Pursuant to the Uniform Code of Military Justice, Chapter 47 of title 10, United States Code, the Chief Counsel of the U.S. Coast Guard is authorized to exercise the powers and perform the duties, with respect to the Coast Guard, under the following sections of the Uniform Code:

(1) The authority to recommend assignment for duty of law specialists under Article 6(a), section 806(a) of title 10, United States Code.

(2) The authority to make field inspections in connection with the administration of military justice under Article 6(a) section 806(a) of title 10, United States Code.

(3) The authority to designate military judges; to make assignments of, and exercise direct responsibility for, military judges; and to assign, or approve the performance of, other duties of a judicial or nonjudicial nature by military judges under Article 26(c), section 826(c) of title 10, United States Code.

(4) The authority to forward to a Court of Military Review records that must be referred to a Court of Military Review under Article 66(b), section 866(b) of title 10, United States Code.

(5) The authority to instruct the convening authority to take action in accordance with the decision of the Court of Military Review and authority to dismiss the charges under Article 66(e), section 866(e) of title 10, United States Code.

(6) The authority to modify or vacate findings and sentences in cases not reviewed by a Court of Military Review under Article 69, section 869 of title 10, United States Code.

(7) The authority to certify counsel as competent to perform the duties of trial counsel and defense counsel of a general court-martial under 10 U.S.C. 827(b), Art. 27(b) UCMJ.

(b) The authority delegated by subparagraph (3) of paragraph (a) may be redelegated only to the Deputy Chief Counsel.

(c) The Chief Counsel shall make an annual summary report of his actions taken under subparagraph (6) of paragraph (a) of this delegation to the General Counsel of the Department of Transportation (including the number of cases subject to that authority, the number of applications for review filed, and the disposition thereof) for inclusion, as appropriate, in the Judge Advocates General and Court of Military Appeals report to Congress required by Article 67(g), section 867(g) of title 10, United States Code.

3. *Chief Counsels.* The General Counsel has delegated to the Chief Counsels the authority delegated to the General Counsel by Amendment 1-41 to Part 1 of Title 49, Code of Federal Regulations, 35 FR 17653, November 17, 1970, as follows—

Section 855 of the Revised Statutes, as amended by Pub. L. 91-393, 84 Stat. 835 (40 U.S.C. 255) authorizes the Attorney General to delegate to other departments and agencies his authority to give written approval of the sufficiency to the title to land being acquired by the United States. The Attorney General has delegated to the Assistant Attorney General in charge of the Land and Natural Resources Division the authority to make delegations under that law to other Federal departments and agencies (35 FR 16084; 28 CFR 0.66). The Assistant Attorney General, Land and Natural Resources Division, has further delegated certain responsibilities in connection with the approval of the sufficiency of the title to land to the Department of Transportation as follows:

DELEGATION TO THE DEPARTMENT OF TRANSPORTATION FOR THE APPROVAL OF THE TITLE TO LANDS BEING ACQUIRED FOR FEDERAL PUBLIC PURPOSES

Pursuant to the provision of Pub. L. 91-393, approved September 1, 1970, 84 Stat. 835, amending R.S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440-70 of the Attorney General, dated October 2, 1970, the responsibility for the approval of the sufficiency of the title to land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

1. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.

2. This delegation is limited to:

(a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.

(b) The acquisition of lands valued at $100,000 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations.

As stated in the above-mentioned Act, any Federal department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

The Chief Counsels of the United States Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Administration, and the St. Lawrence Seaway Development Corporation are hereby authorized to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of their respective organizations. This delegation is subject to the limitations imposed by the Assistant Attorney General, Land and Natural Resources Division, in his delegation to the Department of Transportation. Redelegation of this authority may only be made by the Chief Counsels to attorneys within their respective organizations.

If his organization does not have an attorney experienced and capable in the examination of title evidence, a Chief Counsel may, with the concurrence of the General Counsel, request the Attorney General to (1) furnish an opinion as to the validity of a title to real property or interest therein, or (2) provide advice or assistance in connection with determining the sufficiency of the title.

4. *Chief, Accounting Operations Center.* The Assistant Secretary for Administration has redelegated to the Chief, Accounting Operations Center, authority to—

(a) Designate to the Treasury Department certifying officers and designated agents for the Office of the Secretary, except at the Transportation Systems Center, and imprest fund cashiers for the Departmental headquarters.

(b) Certify to the validity of obligations as required by 31 U.S.C. 200 and to the adequacy of bond coverage for the designations under 49 CFR 1.60(c)(2).

(c) Sign reports on budget execution as required by OMB Circular A-34.

5. *Director, Materials Transportation Bureau.* The authority delegated to the Administrator of the Research and Special Programs Administration by the Secretary of Transportation in 49 CFR 1.53 (a) and (b) relating to the transportation of hazardous materials and pipeline safety and the authority of 49 CFR 1.45(a)(13) relating to the findings and certifications required under the Regulatory Flexibility Act are hereby redelegated to the Director of the Materials Transportation Bureau.

(49 CFR 1.45(a) and 1.53(a))

[Amdt. 1-113, 40 FR 43901, Sept. 24, 1975, as amended by Amdt. 1-121, 41 FR 44043, Oct. 6, 1976; Amdt. 1-130, 42 FR 58754, Nov. 11, 1977; Amdt. 1-132, 43 FR 5834, Feb. 10, 1978; Amdt. 1-153, 45 FR 14577, Mar. 6, 1980; 46 FR 37902, July 23, 1981]

PART 3—OFFICIAL SEAL

Sec.

3.1 Description.
3.3 Authority to affix seal.
3.5 Use of the seal.

AUTHORITY: Sec. 9(k), 49 U.S.C. 1657(k).

SOURCE: Amdt. 3-3, 45 FR 75666, Nov. 17, 1980, unless otherwise noted.

§ 3.1 Description.

The official seal of the Department of Transportation is described as follows: A white abstract triskelion figure signifying motion appears within a circular blue field. The figure is symmetrical. The three branches of the figure curve outward in a counter-clockwise direction, each tapering almost to a point at the edge of the field. Surrounding the blue circle is a circular

ring of letters. The upper half of the ring shows the words "Department of Transportation". The lower half of the ring shows the words "United States of America". The letters may be shown in either black or medium gray. The official seal of the Department is modified when embossed. It appears below in black and white.

§ 3.3 Authority to affix seal.

(a) The following officials of the Department of Transportation are authorized to affix the official seal of the Department of Transportation to appropriate documents and other materials of the Department, for all purposes, including those authorized by 28 U.S.C. 1733(b): The General Counsel, the Assistant Secretary for Administration, the Commandant of the Coast Guard, the Federal Aviation Administrator, the Federal Highway Administrator, the Federal Railroad Administrator, the Urban Mass Transportation Administrator, the National Highway Traffic Safety Administrator, the Maritime Administrator, the Research and Special Programs Administrator, the Inspector General, and the Chairman, Board of Contract Appeals.

(b) The officers named in paragraph (a) of this section may redelegate, and authorize redelegations of, this authority.

[Amdt. 3-3, 45 FR 75666, Nov. 17, 1980, as amended by Amdt. 3-4, 46 FR 42272, Aug. 20, 1981]

§ 3.5 Use of the Seal.

(a) The Seal is the official emblem of the Department of Transportation and its use is therefore permitted only as provided in this part.

(b) Use by any person or organization outside of the Department may be made only with the Department's prior written approval.

(c) Requests by any person or organization outside of the Department for permission to use the Seal must be made in writing to the Assistant Secretary for Administration, 400 Seventh St., SW., Washington, D.C. 20590, and must specify, in detail, the exact use to be made. Any permission granted applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(d) Use of the Seal shall be essentially for informational purposes. The Seal may not be used on any article or in any manner which may discredit the Seal or reflect unfavorably upon the Department or which implies Departmental endorsement of commercial products or services, or of the user's policies or activities. Specifically, permission may not be granted under this section for use—

(1) On souvenir or novelty items of an expendable nature;

(2) On toys, gifts, or premiums;

(3) As a letterhead design;

(4) On menus, matchbook covers, covers, calendars, or similar items;

(5) To adorn civilian clothing; or

(6) On athletic clothing or equipment.

(e) Where necessary to avoid any prohibited implication or confusion as to the Department's association with the user, an appropriate legend will be prescribed by the Department for prominent display in connection with the permitted use.

(f) Falsely making, forging, counterfeiting, mutilating, or altering the Seal, or knowingly using or possessing with fraudulent intent any altered Seal is punishable under section 506 of title 18, United States Code.

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PART 5—RULEMAKING PROCEDURES

Subpart A—General

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APPENDIX A

AUTHORITY: Sec. 9, 80 Stat. 944 (49 U.S.C. 1657), unless otherwise noted.

SOURCE: 32 FR 10363, July 14, 1967, unless otherwise noted.

Subpart A—General

§ 5.1 Applicability.

(a) This part prescribes general rule-making procedures that apply to the issue, amendment, and repeal of rules of the Secretary of Transportation. It does not apply to rules issued by the National Transportation Safety Board, U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration, National Highway Traffic Safety Administration, or St. Lawrence Seaway Development Corporation.

(b) For the purposes of this part, "Secretary" means the Secretary of Transportation or the Under Secretary of Transportation, or any of the following to whom the Secretary has delegated authority to conduct rule-making proceedings:

(1) Any Assistant Secretary.

(2) The General Counsel.

Any of these officers may redelegate that authority to the head of any office who reports to him.

(c) Records relating to rule-making proceedings are available for inspection as provided in Part 7 of this subtitle.

[32 FR 10363, July 14, 1967, as amended by Amdt. 5-2, 35 FR 5331, Mar. 31, 1970; Amdt. 5-3, 36 FR 430, Jan. 13, 1971]

§ 5.3 Initiation of rule making.

The Secretary initiates rule making on his own motion. However, in doing so, he may, in his discretion, consider the recommendations of other agencies of the United States and of other interested persons.

§ 5.5 Participation by interested persons.

Any person may participate in rule-making proceedings by submitting written information or views. The Secretary may also allow any person to participate in additional rule-making proceedings, such as informal appearances or hearings, held with respect to any rule.

§ 5.7 Regulatory docket.

(a) Records of the Office of the Secretary of Transportation concerning rule-making actions, including notices of proposed rule making, comments received in response to those notices, petitions for rule making or exemption, petitions for rehearing or reconsideration, grants and denials of exemptions, denials of petitions for rule making, and final rules are maintained in current docket form in the Office of the General Counsel.

(b) Any person may examine any docketed material at that office and may obtain a copy of any docketed material upon payment of the prescribed fee.

Subpart B—Petitions for Rule Making or Exemptions

§ 5.11 Filing of petitions.

(a) Any person may petition the Secretary to issue, amend, or repeal a rule, or for a permanent or temporary exemption from any rule.

(b) Each petition filed under this section must—

(1) Be submitted in duplicate to the Docket Clerk, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590;

(2) Set forth the text or substance of the rule or amendment proposed, or of the rule from which the exemption is sought, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(3) Explain the interest of the petitioner in the action requested including, in the case of a petition for an exemption, the nature and extent of the relief sought and a description of the persons to be covered by the exemption;

(4) Contain any information and arguments available to the petitioner to support the action sought; and

(5) In the case of a petition for exemption, unless good cause is shown in that petition, be submitted at least 60 days before the proposed effective date of the exemption.

§ 5.13 Processing of petitions.

(a) *General.* Each petition received under § 5.11 of this part is referred to the head of the office responsible for the subject matter of that petition. No public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the Secretary determines that the petition contains adequate justification, he initiates rule-making action under Subpart C of this part or grants the exemption, as the case may be.

(c) *Denials.* If the Secretary determines that the petition does not justify initiating rule-making action or granting the exemption, he denies the petition.

(d) *Notification.* Whenever the Secretary determines that a petition should be granted or denied, the office concerned and the Office of the General Counsel prepare a notice of that grant or denial for issuance to the petitioner, and the Secretary issues it to the petitioner.

Subpart C—Procedures

§ 5.21 General.

(a) Unless the Secretary finds, for good cause, that notice is impractical, unnecessary, or contrary to the public interest, a notice of proposed rule making is issued and interested persons are invited to participate in the rule-making proceedings with respect to each substantive rule.

(b) Unless the Secretary determines that notice and public rule-making proceedings are necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are prescribed as final without notice or other public rule-making proceedings.

(c) In his discretion, the Secretary may invite interested persons to participate in the rule-making proceedings described in § 5.29 of this subpart.

§ 5.23 Contents of notices.

(a) Each notice of proposed rule making is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the FEDERAL REGISTER or personally served, includes—

(1) A statement of the time, place, and nature of the proposed rule-making proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects or issues involved or the substance or terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted and the required number of copies; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

§ 5.25 Petitions for extension of time to comment.

(a) Any person may petition the Secretary for an extension of time to submit comments in response to a notice of proposed rule making. The petition must be submitted in duplicate not later than 3 days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Secretary grants the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, it is granted as to all persons and is published in the FEDERAL REGISTER.

§ 5.27 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered so far as possible without incurring additional expense or delay.

§ 5.29 Additional rule-making proceedings.

The Secretary may initiate any further rule-making proceedings that he finds necessary or desirable. For example, he may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceeding.

§ 5.31 Hearings.

(a) Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. As a fact-finding proceeding, each hearing is nonadversary and there are no formal pleadings or adverse parties. Any rule issued in a case in which a hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Secretary designates a representative to conduct any hearing held under this part. The General Counsel designates a member of his staff to serve as legal officer at the hearing.

§ 5.33 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of the General Counsel. The rule is then submitted to the Secretary for his consideration. If the Secretary adopts the rule, it is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

Subpart D—Financial Assistance to Participants in Rulemaking Proceedings

AUTHORITY: Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1407; secs. 102, 201, 408, 501, et seq., Pub. L. 92-513, 86 Stat. 949 (15 U.S.C. 1912, 1941, 1988, 2001, et seq.); Pub. L. 89-554, 80 Stat. 499 (5 U.S.C. 5703); Pub. L. 95-335, 92 Stat. 435).

SOURCE: Subpart D, Amdt. 2, 44 FR 4677, Jan. 23, 1979, unless otherwise noted.

§ 5.41 Purpose.

This part establishes procedures governing the compensation of participants in Department of Transportation (DOT) rulemaking proceedings in the National Highway Traffic Safety Administration (NHTSA).

§ 5.43 Applicability.

This part applies to any individual, group, association, partnership, or corporation seeking financial assistance for participation in a rulemaking proceeding of NHTSA. This part does not, however, create any new right to intervene or otherwise participate in any proceeding.

§ 5.45 Definitions.

As used herein—

(a) "Administrator" means the Administrator of NHTSA or his or her delegate.

(b) "Applicant" means any individual, or any profit or nonprofit group, association, partnership, or corporation seeking compensation under this part, but does not include a local, state, or Federal agency.

(c) "Application" means a document or proposal that complies with § 5.49 and is submitted to the Evaluation Board.

(d) "Evaluation Board"—means an independent panel which is not subject to the authority of other officials when evaluating applications under this part, and is composed of the Assistant Director for Consumer Affairs, the Associate Administrator for Plans and Programs of NHTSA, and the Chief Counsel of NHTSA, or their respective delegates.

(e) "Qualified applicant" means an applicant the Evaluation Board has determined is eligible under the criteria of § 5.51(b).

(f) "Rulemaking" has the meaning given in 5 U.S.C. 551.

(g) "Rulemaking proceeding" ("proceeding") means any phase of a NHTSA rulemaking process that is open to public participation, including any advance notice or notice of proposed rulemaking, or any meeting, hearing, or solicitation of comments in contemplation of rulemaking. A proceeding is commenced by publication of a notice in the FEDERAL REGISTER announcing that NHTSA is soliciting comment for a proceeding.

(h) "Secretary" means the Secretary of Transportation or his or her delegate.

§ 5.47 Notice of the Availability of Compensation.

(a) The Administrator determines which proceedings will be funded upon an evaluation of their: (1) Contribution to fulfilling agency goals; (2) costliness or controversiality to consumers, regulated parties, and other affected parties; (3) the availability of funds; (4) the time available to complete the proceeding; and (5) the likelihood that funds would enhance effective public participation. When feasible, the public's views are considered regarding which proceedings should be funded.

(b) When the Administrator determines that compensation will be available for participation in a proceeding, he or she directs that notice of the availability of compensation be published in the FEDERAL REGISTER as part of the notice commencing the proceeding. The NHTSA Office of Consumer Participation maintains a list of groups and individuals to be directly notified of the proceeding. This list is composed of those who have requested notice of the proposed proceeding or who have been identified by the Office as being particularly affected by the proceeding. The Office mails the notice directly to all persons on the list, once the notice has been posted by the FEDERAL REGISTER.

(c) Except in the case of a proceeding held to meet a congressional or judicial deadline or resolve exigent problems, the notice of the availability of compensation sets a deadline for submission of applications of not less than 30 days following publication of the notice and indicates to whom applications are submitted. In the case of a proceeding held to meet a congressional or judicial deadline or resolve exigent problems, when a deadline of 30 days or more is not feasible, the notice of the availability of compensation sets a deadline of not less than 15 days.

(d) Except in the case of a proceeding held to meet a congressional or judicial deadline or resolve exigent problems, the comment period for a proceeding in which compensation is made available is not less than 90 days. In the case of a proceeding held to meet a congressional or judicial deadline or resolve exigent problems, when it is not feasible to set the comment period at not less than 90 days, the comment period is extended by the number of days between the deadline for submission of applications and the decision of the Evaluation Board on all of the timely received applications.

(e) The Secretary indicates in the Department's Semi-Annual Regulations Report, published in the FEDERAL REGISTER, pursuant to Executive Order 12044, the proceedings in which funding under this part is contemplated. the Administrator mails copies of this report to all persons on the list maintained pursuant to paragraph (b) of this section.

(f) The minimum period required under paragraph (c) of this section need not be provided if:

(1) The Semi-Annual Regulations Agenda is published at least 30 days or, in the case of a proceeding held to meet a congressional or judicial deadline or resolve exigent problems, at

least 15 days prior to the commencement of the proceeding;

(2) The Agenda describes the issues of these proceedings with reasonable accuracy and completeness;

(3) Invitations have been mailed to the interested public; and

(4) At least three qualified applicants have responded, and the Evaluation Board will approve or deny these applicants before the commencement of the proceeding.

§ 5.49 Contents of the application.

Each application shall contain, in a sworn statement, the information requested below, in the order specified. Failure to include the requested information may result in a delay in the Evaluation Board's consideration of the application and may also result in disqualification of the application. Applications shall be directed to the NHTSA Office of Consumer Participation.

(a) The applicant's name and address, and in the case of an organization, the names, addresses, and titles of the members of its governing body and a description of the organization's general purpose, structure, and Federal income tax status.

(b) An identification of the proceeding for which funds are requested.

(c) A description of the applicant's economic, social and other interests in the outcome of the proceeding, including any effect the outcome of the proceeding may have on the income of the applicant or the applicant's members.

(d) A description of any contracting, consulting or other income producing relationship of the applicant with an organization having an economic interest in the regulation which is the subject of the proceeding.

(e) A discussion of the reasons why the applicant is an appropriate representative of those interests, including the expertise and experience of the applicant, and any consultants it intends to employ, in the matters involved in the proceeding, and evidence of the applicant's prior general performance and the applicant's relation to the interest it seeks to protect or represent.

(f) A description and explanation of the position(s) the applicant proposes to present at the proceeding, including a description of the evidence, studies, viewpoints, methodologies, and information to be developed or used in supporting the applicant's position(s). The applicant should describe the issues it plans to address, how the applicant plans to resolve these issues, and how the issues affect the applicant's interest in the proceeding. This discussion should explain which ideas or viewpoints the applicant believes are novel or significant, and why the applicant believes that the presentation of these ideas and viewpoints would contribute to a full and fair determination of the issues involved in the proceeding.

(g) An itemized statement of the total amount of funds requested, which shall clearly state for each task: the identity of persons performing the task and their hourly rates of pay, the total cost of the task, and the total hours required to perform the task.

(h) Except for individuals applying for funds only for travel, subsistence, and related miscellaneous expenses—

(1) A listing of the applicants' current and long term assets and liabilities as of the close of the preceding fiscal year, and as of the date of application, with an explanation of why the applicant cannot use any excess of assets over liabilities in order to participate in the proceeding.

(2) A statement of the applicants' revenues and expenses for the preceding fiscal year, and an estimate of the applicant's anticipated revenues and expenses for the current fiscal year, including, in the case of a group, association, partnership or corporation, a list of planned projects and the amounts to be expended on each.

(3) Where an applicant has previously submitted an application for financial assistance under this program during the preceding six months of the current fiscal year, the applicant need only inform the agency of any material changes in the financial data previously submitted.

(i) A list of all proceedings of the Federal Government in which the applicant has participated during the past year (including the interest repre-

sented and the contribution made) any amount of financial assistance received from any agency of the Federal Government in connection with these proceedings.

§ 5.51 Processing applications.

(a) The Evaluation Board accepts applications from the time notice is published until the time for public participation in a proceeding has ended; however, applications received after the specified deadline are not assured full consideration. The Board may request applicants to provide additional written or oral information necessary to full consideration of the application. Such additional written information, summaries of such oral information, and copies of each application are available for public inspection at NHTSA's Washington office.

(b) Within 15 working days following the deadline for receipt of applications, the Evaluation Board receives any technical comments from the official most directly responsible for the development of NHTSA's position on the substantive issues of the proceeding, and the Evaluation Board then approves or denies, in whole or in part, each application submitted. If the Board requests an applicant to provide additional information, the time period for Board action on the application is suspended for the period of time specified by the Board for receipt of the additional information. The Evaluation Board may approve an application, if it finds that:

(1) The applicant's participation would contribute or could reasonably be expected to, contribute substantially to a full and fair determination of the issues involved in the proceeding, taking into consideration the novelty, complexity, and significance of the ideas advanced by the applicant, and taking into account the ability of the applicant to represent the interests it espouses competently, when assessed under the following criteria:

(i) The applicant's, or its consultant's or attorney's, experience and expertise in the substantive area at issue in the proceeding;

(ii) The applicant's, or its consultant's or attorney's, prior general performance and competence; and

(iii) Evidence of the applicant's relationship to the interest it seeks to protect or represent.

(2) The applicant has demonstrated that it does not have sufficient resources available to participate effectively in the proceeding in the absence of an award under this part. If an individual applies for reimbursement only for reasonable travel, subsistence, and permitted miscellaneous expenses to participate in the proceeding, the Board does not make the finding otherwise required by this subparagraph.

(c) (1) When two or more qualified applicants seek to represent the same or similar interest but would present significant differences in viewpoint or proposals, the Evaluation Board may partially or completely grant funds to one or more of them.

(2) When two or more qualified applicants seek to represent the same or similar interest without significant differences in viewpoint or proposals, the Evaluation Board may select all or some of these qualified applicants if the Board determines their selection would promote the presentation of a fair balance of views at the proceeding.

(3) To preclude duplicative presentations, other than those qualifying under § 5.51(c)(2), the Evaluation Board selects the qualified applicant it considers most competent under the criteria of § 5.51(b)(1), and whose proposals are the most specific, significant, and novel.

(d) The Evaluation Board is not required to select a qualified applicant if the Board determines that selection of an otherwise qualified applicant would be impracticable or unreasonable. In deciding to deny an otherwise qualified applicant, the Board may consider the following and other factors:

(1) Whether an applicant's proposal can be reasonably developed and presented within the time allotted for the rulemaking proceeding;

(2) The availability of funding under this part;

(3) The significance of the proceeding in question and the amount of funds needed by the applicant; and

(4) The reasonableness of the sums requested.

(e) No applicant may be awarded more than 20% of the total amount of funds to be allocated by NHTSA for public participation for a Fiscal Year.

(f) A written decision of the Evaluation Board, stating why assistance has either been granted or denied in light of the criteria in paragraphs (b) through (e) of this section mailed to each applicant. Copies of each decision of the Board are *available for public inspection at NHTSA's Washington office.*

(g) Upon good cause timely shown by an applicant, the decision of the Evaluation Board regarding its application may be reconsidered by the Board.

§ 5.53 Recoverable costs.

(a) Expenses compensable under this regulation include but are not limited to reasonable attorneys' fees; expert witness fees; the expenses of clerical services, travel, subsistence, studies, demonstrations and other reasonable costs of participation actually incurred.

(b) Compensation of an applicant is limited to the actual and reasonable costs of its participation. Compensation paid to the staff of any participating group or organization is limited to the rate of reimbursement normally paid by the participant for staff services and may not exceed the rates paid to DOT employees for providing comparable services. Compensation of a participant's contractor may be valued at the prevailing market rates for the kind and quality of service provided, but may not exceed the rates paid to DOT employees for providing comparable services.

(c) Reimbursement for travel, subsistence, and miscellaneous expenses must conform to the types and rates prescribed by the DOT "Travel Manual," (DOT Order 1500.6).

(d) Except as otherwise noted in this paragraph, compensation is not provided for work performed or costs incurred prior to approval of an application by the Evaluation Board. Compensation is not provided for negotiating claims, answering NHTSA inquiries, or preparing an application, other than a participant's first approved application.

§ 5.55 Supplementary compensation.

(a) Applicants may apply to the Evaluation Board for supplementary compensation if the initial award is insufficient to permit the applicant to complete its proposal and if:

(1) The Board requested the applicant to perform work in addition to that contained in the approved proposal, or

(2) The applicant demonstrates it has been subject to an unforeseeable and material change in its circumstances, or

(3) The applicant or the Board substantially underestimated the probable cost of participation.

(b) Compensation is not provided for work performed or costs incurred by an applicant or its contractors in advance of the Board's decision to provide supplementary compensation.

(c) The Board provides supplementary compensation under the criteria of § 5.51 and paragraphs (a) and (b) of this section.

§ 5.57 Payments to applicants.

An applicant shall submit a claim for compensation to NHTSA's Office of Consumer Participation within 90 days of the applicant's completion of participation in the proceeding. Such claims shall include bills, receipts, or other proofs of costs incurred. Within 60 days of receipt of a completed claim, NHTSA's Office of Consumer Participation, after consultation with NHTSA's Office of Financial Management, directs the Office of Financial Management to make payment for compensable expenses. For good cause shown, payment to an applicant may be expedited, and requests for partial payment may be submitted for compensation of part performance. Payment of claims is delayed, or relevant portions withheld, if it is determined that a claim or any portion of a claim will be audited within 90 days of the submission of the claim.

§ 5.58 Audits.

For the purpose of conducting an audit, the Secretary, the Administrator, or other appropriate Federal official shall have access to any relevant records of a participant awarded com-

pensation under this part. Applicants shall retain all records, books of account, bills, receipts, and any other relevant records supporting a claim for compensation for a period of three years after receipt of such compensation.

§ 5.59 Guidelines.

The Secretary establishes guidelines to explain further the criteria to be used by the Evaluation Board in assessing financial data under § 5.51(b)(2) and for determining reasonable allowable costs under § 5.53. The Secretary may establish additional guidelines governing applicants' accounting and recordkeeping procedures.

APPENDIX A

Pursuant to § 5.1(b), the following officials of the Office of the Secretary of Transportation are authorized to conduct rule-making proceedings under this part, as specified in this appendix:

(1) The General Counsel is authorized to conduct all rule-making proceedings, except the issuance of final rules, under the Act of March 19, 1918, ch. 24, as amended (15 U.S.C. 261-264); the Uniform Time Act of 1966 (80 Stat. 107, 15 U.S.C. 260-267); and section 6(e)(5) of the Department of Transportation Act (80 Stat. 939, 49 U.S.C. 1655 (e)(5)).

(2) The General Counsel is authorized to determine the practicability of applying the standard time of any standard time zone to the movements of any common carrier engaged in interstate or foreign commerce, and, under section 2 of the Act of March 19, 1918, ch. 24, as amended (15 U.S.C. 262), to issue operating exceptions in any case in which he determines that it is impractical to apply the standard time.

[Amdt. 5-1, 32 FR 11473, Aug. 9, 1967]

PART 7—PUBLIC AVAILABILITY OF INFORMATION

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AUTHORITY: 5 U.S.C. 552; Pub. L. 93-502, 88 Stat. 1565; 31 U.S.C. 438; 49 U.S.C. 1657.

SOURCE: 40 FR 7915, Feb. 24, 1975, unless otherwise noted.

Subpart A—Applicability and Policy

§ 7.1 Applicability.

(a) This part implements section 552 of Title 5, United States Code, and prescribes rules governing the availability to the public of the records of the Department of Transportation.

(b) Subpart G of this part describes the records that are not required to be disclosed under this part.

(c) Appendices A through H to this part:

(1) Describe the places and times at which records will be available for inspection and copying;

(2) Define the kinds of records located at each facility;

(3) Contain the indexes to such records; and

(4) Identify the officials having authority to deny requests for disclosure of records under this part.

(d) The Director of Public Affairs may amend Appendix A to this part to reflect any changes in the items covered by that appendix. The head of the operating administration concerned may amend the appendix applicable to that Administration to reflect any changes in the items covered by that appendix.

(e) This part applies only to records that exist at the time the request for the information is made. The Department is not required to compile or procure a record solely for the purpose of making it available under this part.

(f) Indexes are maintained to reflect all records subject to this part, and are available for public inspection and copying as provided in Appendices A through H to this part.

§ 7.3 Policy.

In implementing section 552 of Title 5, United States Code, it is the policy of the Department of Transportation to make information within the Department available to the public to the greatest extent possible in keeping with the spirit of that section. Therefore, all records of the Department, except those that the Department specifically determines must not be disclosed in the national interest, for the protection of private rights, or for the efficient conduct of public business to the extent permitted by the Freedom of Information Act, are declared to be available for public inspection and copying as provided in this part. Each officer and employee of the Department is directed to cooperate to this end and to make records available to the public promptly and to the fullest extent consistent with this policy. A record may not be withheld from the public solely because its release might suggest administrative error or embarrass an officer or employee of the Department.

§ 7.5 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

"Department" means the Department of Transportation, including the Office of the Secretary and the following operating administrations:

(a) The Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The National Highway Traffic Safety Administration.

(f) The Urban Mass Transportation Administration.

(g) The St. Lawrence Seaway Development Corporation.

"He" includes she.

"Includes" means "includes but is not limited to."

"May" is used in a permissive sense to state authority or permission to do the act prescribed.

"Record" includes any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved.

"Secretary" means the Secretary of Transportation or any person to whom he has delegated his authority in the matter concerned.

[40 FR 7915, Feb. 26, 1975, as amended by Amdt. 7-9, 40 FR 13307, Mar. 26, 1975]

Subpart B—General

§ 7.11 Administration of part.

Except as provided in Subpart H of this part, authority to administer this part in connection with the records in the Office of the Secretary is delegated to the Director of Public Affairs. Authority to administer this part in connection with records in each operating administration is delegated to the head of that administration. The head of any operating administration may redelegate to officers of that administration the authority to administer this part in connection with defined groups of records. However, the head of an operating administration may redelegate his duties under Subpart H of this part only to his deputy and to not more than one other officer who reports directly to the head and who is located at the headquarters of that administration.

§ 7.13 Deletion of identifying detail.

Whenever it is determined to be necessary to prevent a clearly unwarranted invasion of personal privacy, identifying details are deleted from any record covered by this part that is published or made available for inspection. A full explanation of the justification for the deletion is attached to the copy of the record published or made available for inspection.

§ 7.15 Records containing both available and unavailable information.

If a record contains information that the Department determines cannot be disclosed under this part, but also contains information that can be disclosed, the latter information will be provided for public inspection and copying.

§ 7.17 Protection of records.

(a) No person may, without permission, remove any record made available to him for inspection or copying under this part, from the place where it is made available. In addition, no person may steal, alter, mutilate, obliterate, or destroy, in whole or in part, such a record.

(b) Section 641 of Title 18 of the United States Code provides, in pertinent part, as follows:

> Whoever * * * steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record * * * or thing of value of the United States or of any department or agency thereof * * * shall be fined not more than $10,000 or imprisoned not more than 10 years or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year or both. * * *

Section 2071 of Title 18 of the United States Code provides, in pertinent part, as follows:

> Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited * * * in any public office, or with any * * * public officer of the United States, shall be fined not more than $2,000 or imprisoned not more than 3 years, or both.

Subpart C—Time Limits

§ 7.21 Initial determination.

(a) An initial determination as to whether to release a record requested pursuant to Subpart F shall be made within ten days (excepting Saturdays, Sundays, and legal public holidays) after the request is received in accordance with paragraph (a) of § 7.53 except that this time limit may be extended by up to ten working days in accordance with § 7.25. The person making the request will be notified immediately of such determination. If such determination is to release the

requested record, such record shall be made promptly available. If such determination is not to release the record, the person making the request shall, at the same time he is notified of such determination, be notified of: (1) The reason for the determination; (2) the right of such person to appeal the determination; and (3) the names and titles or positions of each person responsible for the denial of the request.

§ 7.23 Final determination.

A determination with respect to any appeal made pursuant to § 7.81 shall be made within twenty days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such appeal except that this time limit may be extended by up to ten working days in accordance with § 7.25. The person making the request will be notified immediately of such determination, pursuant to § 7.81.

§ 7.25 Extension.

In unusual circumstances as specified in this section, the time limits prescribed in §§ 7.21 and 7.23, may be extended by written notice to the person making a request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Such notice shall not specify a date that would result in a cumulative extension of more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request:

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

Subpart D—Publication in Federal Register

§ 7.31 Applicability.

This subpart implements section 552 (a)(1) of Title 5, United States Code, and prescribes rules governing the publication in the FEDERAL REGISTER of the following:

(a) Descriptions of the organization of the Department, including its operating administrations and the established places at which, the officers from whom, and the methods by which, the public: (1) May secure information; and (2) make submittals or requests or obtain decisions.

(b) Statements of the general course and methods by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability adopted by the Department.

(e) Each amendment, or repeal of any material listed in paragraphs (a) through (d) of this section.

§ 7.33 Publication required.

(a) *General.* All material described in § 7.31 is published in the FEDERAL REGISTER. For the purposes of this paragraph, material that is reasonably available to the class of persons affected by it is considered to be published in the FEDERAL REGISTER if it has been incorporated by reference therein with the approval of the Director of the Federal Register.

(b) *Effect of nonpublication.* Except to the extent that a person has actual and timely notice of the terms thereof, no person may in any manner be required to resort to, or be adversely affected by, any procedure or matter re-

quired to be published in the FEDERAL REGISTER but not so published.

Subpart E—Availability of Opinions, Orders, Staff Manuals, Statements of Policy, and Interpretations: Indexes

§ 7.41 Applicability.

(a) This subpart implements section 552(a)(2) of Title 5, United States Code. It prescribes the rules governing the availability, for public inspection and copying, of the following:

(1) Any final opinion (including a concurring or dissenting opinion) or order made in the adjudication of a case.

(2) Any policy or interpretation that has been adopted under the authority of the Department, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(3) Any administrative staff manual or instruction to staff that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. However this does not include staff manuals or instructions to staff concerning internal operating rules, practices, guidelines and procedures for Departmental inspectors, investigators, examiners, auditors and negotiators, the release of which would substantially impair the effective performance of their duties. Indexes of the materials listed in this paragraph are maintained, as specified in Appendices A-H to this part.

(b) Any material listed in paragraph (a) of this section that is not made available for public inspection and copying, or that is not indexed as required by § 7.45, may not be cited, relied on, or used as precedent by the Department to adversely affect any member of the public unless the person against whom it is cited, relied on, or used has had actual and timely notice of that material.

(c) This subpart does not apply to material that is published in the FEDERAL REGISTER or is covered by Subpart G of this part.

§ 7.43 Access to materials and index.

(a) Except as provided in paragraph (b) of this section, material listed in § 7.41(a) is available for inspection and copying by any member of the public at document inspection facilities of the Department. The index of material available at each facility is published in the FEDERAL REGISTER quarterly and is also located at the facility. Information as to the kinds of materials available at each facility may be obtained from the facility or the headquarters of the operating administration of which it is a part.

(b) The material listed in § 7.41(a) that is published and offered for sale is indexed but is not required to be kept available for public inspection. Whenever practicable, however, it will be made available for public inspection at any document inspection facility maintained by the Office of the Secretary or an operating administration, whichever is concerned.

§ 7.45 Indexes of public materials.

The index of material subject to public inspection and copying under this subpart covers all material issued, adopted, or promulgated after July 4, 1967. However, earlier material may be included in the index to the extent practicable. Each index contains instructions on how to use it.

§ 7.47 Copies.

Copies of any material covered by this subpart that is not published and offered for sale may be ordered, upon payment of the appropriate fee, from the office indicated in § 7.53. Copies are certified upon request and payment of the prescribed fee.

Subpart F—Availability of Reasonably Described Records

§ 7.51 Applicability.

This subpart implements section 552 (a)(3) of Title 5, United States Code, and prescribes the regulations governing public inspection and copying of

reasonably described records. It does not apply, however, to material that is covered by Subpart D of this part, records determined under Subpart G of this part not to be available, and material that is offered for sale by the Government Printing Office.

§ 7.53 Public availability of records.

(a) Each person desiring access to a record covered by this subpart must comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request must indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent must be prominently marked with the letters "FOIA".

(4) The request must be addressed to the appropriate office as set forth in paragraph (c) of this section.

(b) If the requirements of paragraph (a) of this section are not met, the ten day time limit described in § 7.21 will not begin to run until the request has been identified by an employee of the Department as a request under the Freedom of Information Act and has been received by the Office to which it should have been originally sent.

(c) Each person desiring access to a record covered by this subpart that is located in the Office of the Secretary, or to obtain a copy of such a record, must make a written request to the Director of Public Affairs, 400 Seventh Street, SW., Washington, D.C. 20590. Each person desiring access to a record covered by this subpart that is located in an operating administration, or to obtain a copy of such a record, must make a written request to that administration at the address set forth in the appendix applicable to that administration. If the person making the request does not know where in the Department the record is located, he may make inquiry of the Director of Public Affairs as to its location.

(d) Each request should describe the particular record to the extent possible. The request should specify the subject matter of the record, the date when it was made, the place where it was made and the person or office that made it. If the description is insufficient, the officer handling the request will notify the person making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this subpart is available for inspection and copying during regular working hours at the place where it is located or, upon reasonable notice, at the document inspection facilities of the Office of the Secretary or each administration as set forth in the appendix applicable to that office or administration. Original records may be copied but may not be released from custody. Upon payment of the appropriate fee, copies will be mailed to the requester.

(f) Except for services performed without charge or at a reduced charge pursuant to § 7.97, each request for a search of records or for a copy of a record should be accompanied by the fee prescribed in the applicable fee schedule. When the fee is not readily ascertainable without examination of the records, the officer or employee receiving the request will furnish an estimate of the fee to the person making the request or the fee may be collected after the records are made available. If a search is necessary the fee for a search is charged, regardless of whether it is successful.

(g) Notwithstanding paragraphs (a) through (f) of this section, informational material, such as press releases, pamphlets, and other material of that nature that is ordinarily made available to the public as a part of any information program of the Government is available upon oral or written request. There is no fee for individual copies of that material as long as it is in supply. In addition, the Department will continue to respond, without charge, to routine oral or written inquiries that do not involve the furnishing of records.

§ 7.55 Request for records of concern to more than one Government organization.

(a) If the release of a record covered by this subpart would be of concern to both this Department and another Federal agency, the record will be

made available only after consultation with the other interested agency.

(b) If the release of a record covered by this subpart would be of concern to both this Department and a State or local government, or a foreign government, the record will be made available by the Department only after consultation with the other interested State or local government or foreign government.

Subpart G—Exemptions

§ 7.61 Applicability.

This subpart implements section 552 (b) of Title 5, United States Code which exempts certain records from public inspection under section 552(a). The Department will, however, release a record authorized to be withheld under §§ 7.65 through 7.79 unless it determines that the release of that record would be inconsistent with a purpose of the section concerned. Examples given in §§ 7.65 through 7.79 of records included within a particular statutory exemption are not necessarily illustrative of all types of records covered by the exemption.

§ 7.63 Records relating to matters that are required by Executive Order to be kept secret.

Records relating to matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy include those within the scope of the following, and any further amendment of any of them, but only to the extent that the records are in fact properly classified pursuant to such Executive Order:

(a) Executive Order 11652 of March 8, 1972 (37 FR 5209, March 10, 1972).

(b) Executive Order 10865 of February 20, 1960 (3 CFR 1959-1963 Comp., p. 398); and

(c) Executive Order 10104 of February 1, 1950 (3 CFR 1949-1953 Comp., p. 298).

These records may not be made available for public inspection.

[40 FR 7915, Feb. 24, 1975; 40 FR 10471, Mar. 6, 1975]

§ 7.65 Records related solely to internal personnel rules and practices.

(a) Records related solely to internal personnel rules and practices that are within the statutory exemption include memoranda pertaining to personnel matters such as staffing policies and policies and procedures for the hiring, training, promotion, demotion, and discharge of employees, and management plans, records, or proposals related to labor-management relationships.

(b) The purpose of this section is to authorize the protection of any record related to internal personnel rules and practices dealing with the relations between the Department and its employees.

§ 7.67 Records exempted from disclosure by statute.

(a) Records relating to matters that are specifically exempted by statute from disclosure include those covered by the following:

(1) Section 1905 of Title 18, United States Code, protecting trade secrets, processes, and certain economic and other data obtained by examination or investigation, or from reports.

(2) Revised Statutes section 4448, as amended (46 U.S.C. 234) protecting the source of reports of defects and imperfections of vessels.

(3) Revised Statutes section 4551, as amended (46 U.S.C. 643) protecting the names, address, and next of kin of merchant seamen and entries made in records pertaining to merchant seamen.

(4) Pub. L. 86-660, as amended (23 U.S.C. 313 (note), protecting information in the register of persons whose license to operate a motor vehicle has been denied, terminated, or suspended.

(5) Section 106 of Pub. L. 89-564 (23 U.S.C. 313 (note)) so far as it relates to identification of individuals in reports on highway traffic accidents.

(6) Section 902(f) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(f)) relating to information obtained by examining the accounts, records, or memoranda of an air carrier.

(7) Section 1001 of the Federal Aviation Act of 1958 (49 U.S.C. 1481) so far as it relates to the secrecy of acts

and proceedings when requested on grounds of national defense.

(8) Section 1104 of the Federal Aviation Act of 1958 (49 U.S.C. 1504) relating to the withholding, upon request, of information obtained under that Act.

(b) The purpose of this section is to preserve the effectiveness of statutes of the kind listed in paragraph (a) of this section, in accordance with their terms.

§ 7.69 Trade secrets and commercial or financial information that is privileged or confidential.

(a) Trade secrets and commercial or financial information that is privileged and for which confidentiality is requested by the person possessing such privilege are within the statutory exemption. This includes the following:

(1) Commercial or financial information not customarily released to the public, furnished and accepted in confidence.

(2) Commercial, technical, and financial information furnished by any person in connection with an application for a loan or a loan guarantee.

(3) Commercial or financial information customarily subjected to an attorney-client or similar evidentiary privilege.

(4) Materials in which the Department has a property right such as designs, drawings, and other data and reports acquired in connection with any research project, inside or outside of the Department, or any grant or contract.

(5) Business records of the Alaska Railroad of the kind which are ordinarily treated by railroads as confidential.

(b) The purpose of this section is to authorize the protection of trade secrets and commercial or financial records that are customarily privileged or are appropriately given to the Department in confidence. It assures the confidentiality of trade secrets and commercial or financial information obtained by the Department through questionnaires and required reports to the extent that the information would not customarily be made public by the person from whom it was obtained. In any case in which the Department has obligated itself not to disclose trade secrets and commercial or financial information it receives, this section indicates the Department's intention to honor that obligation to the extent permitted by law. In addition, this section recognizes that certain materials, such as research data and materials, formulae, designs, and architectural drawings, have significance not as records but as items of property acquired, in many cases, at public expense. In any case in which similar proprietary material in private hands would be held in confidence, material covered by this section may be held in confidence.

§ 7.71 Intragovernmental exchanges.

(a) Any record prepared by a Government officer or employee (including those prepared by a consultant) for internal Government use is within the statutory exemption to the extent that it contains—

(1) Opinions, advice, deliberations, or recommendations made in the course of developing official action by the Government, but not actually made a part of that official action, or

(2) Information concerning any pending proceeding or similar matter including any claim or other dispute to be resolved before a court of law, administrative board, hearing officer, or contracting officer.

(b) This section has two distinct purposes. One is to protect the full and frank exchange of ideas, views, and opinions necessary for the effective functioning of the Government and to afford this protection both before and after any action is taken. This judicially recognized privilege of protection against disclosure in litigation or elsewhere is intended to assure that these resources will be fully and readily available to those officials upon whom the responsibility rests to take official and final Departmental action. However, the action itself, any memoranda made part of that action, and the facts on which it is based are not within this protection. The other purpose is to protect against the premature disclosure of material that is in the development stage if premature disclosure would be detrimental to the author-

ized and appropriate purposes for which the material is being used, or if, because of its tentative nature, the material is likely to be revised or modified before it is officially presented to the public.

(c) Examples of records covered by this section include minutes, to the extent they contain matter described in paragraph (a) of this section; staff papers containing advice, opinions, suggestions, or exchanges of views, preliminary to final agency decision or action; budgetary planning and programming information; advance information on such things as proposed plans to procure, lease, or otherwise hire and dispose of materials, real estate, or facilities; documents exchanged preparatory to anticipated legal proceedings; material intended for public release at a specified future time, if premature disclosure would be detrimental to orderly processes of the Department; records of inspections, investigations, and surveys pertaining to internal management of the Department; and matters that would not be routinely disclosed under disclosure procedures in litigation and which are likely to be the subject of litigation. However, if such a record also contains factual information, that information must be made available under § 7.15, unless the facts are so inextricably intertwined with deliberative or policy-making processes, that they cannot be separated without disclosing those processes.

§ 7.73 Protection of personal privacy.

(a) Any of the following personnel, medical, or similar records is within the statutory exemption if its disclosure would harm the individual concerned or be a clearly unwarranted invasion of his personal privacy:

(1) Personnel and background records personal to any officer or employee of the Department, or other person, including his home address.

(2) Statements of financial interests furnished by employees of the Department.

(3) Medical histories and medical records concerning individuals, including applicants for licenses.

(4) Any other detailed record containing personal information identifiable with a particular person.

(b) The purpose of this section is to provide a proper balance between the protection of personal privacy and the preservation of the public's right to Departmental information by authorizing the protection of information that, if released, might unjustifiably invade an individual's personal privacy.

§ 7.75 Investigatory records compiled for law enforcement purposes.

(a) Records compiled by the Department for law enforcement purposes, including the enforcement of the regulations of the Department, are within the statutory exemption to the extent that production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel.

(b) The purpose of this section is to protect from disclosure the law enforcement files of the Department, including files prepared in connection with related litigation and adjudicative proceedings. It includes the enforcement not only of criminal statutes but all kinds of laws.

§ 7.77 Reports of financial institutions.

Any material contained in or related to any examination, operating, or condition report prepared by, on behalf of, or for the use of, any agency responsible for the regulation or supervision of financial institutions is within the statutory exemption.

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§ 7.79 Geological and geophysical information.

Any geological or geophysical information and data (including maps) concerning wells is within the statutory exemption.

Subpart H—Procedures for Reconsidering Decisions Not To Disclose Records

§ 7.81 General.

(a) Each officer or employee of the Department who, upon a request by a member of the public for a record under this part, makes a determination that the record is not to be disclosed, will give a written statement of his reasons for that determination to the person making the request; and indicate the name and title or position of each person responsible for the denial of such request, and the availability of an appeal within the Department.

(b) Any person to whom a record has not been made available within the time limits established by Subpart C and any person who has been given a determination pursuant to paragraph (a) of this section, that a record he has requested will not be disclosed, may apply to the head of the operating administration concerned, or in the case of the Office of the Secretary, to the General Counsel of the Department, for reconsideration of the request. Any person on whose request an initial determination has not been made within the time limits established by Subpart C may consider his request denied and may appeal this denial either administratively or judicially. A determination that a record will not be disclosed is not administratively final for the purposes of judicial review unless it was made by the head of the operating administration concerned (or his designee), or the General Counsel, as the case may be, unless the applicable time limit has passed without a determination of the appeal having been made. Upon a determination that an appeal will be denied, the requester shall be informed in writing of the reasons for the determination, and the names and titles or positions of each person responsible for the determination, and that the determination may be appealed to the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are located, or in the District of Columbia.

(c) Each application for reconsideration must be made in writing within sixty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. Such application must indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters "FOIA". If these requirements are not met, the twenty day time limit described in § 7.23 will not begin to run until the application has been identified by an employee of the Department as an application under the Freedom of Information Act and has been received by the appropriate office.

(d) Whenever the head of the operating administration concerned, or the General Counsel, as the case may be, determines it to be necessary, he may require the person making the request to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. The decision of the head of the operating administration concerned, or the General Counsel, as the case may be, as to the availability of the record is administratively final.

(e) The decision by the head of the operating administration concerned, or the General Counsel, as the case may be, not to disclose a record under this part is considered to be a withholding by the Secretary for the purposes of section 552(a)(3) of title 5, United States Code.

(f) Any final decision by the head of an operating administration or his delegee identified in Appendices B through H of this part, not to disclose a record under this part is subject to concurrence by the General Counsel.

[40 FR 7915, Feb. 24, 1975; 40 FR 10471, Mar. 6, 1975]

Subpart I—Fees

§ 7.91 General.

(a) This subpart prescribes fees for services performed for the public under Subparts E and F of this part by the Department of Transportation.

(b) This subpart does not apply to any special study, special statistical compilation, table or other record requested under section 9(n) of the Department of Transportation Act. The fee for the performance of such a service is the actual cost of the work involved in compiling the record. All moneys received by the Department in payment of the cost of the work are deposited in a separate account administered under the direction of the Secretary, and may be used for the ordinary expenses incidental to the work.

§ 7.93 Payment of fees.

The fees prescribed in this subpart may be paid by check, draft, or postal money order, payable to the Treasury of the United States. Except as provided in § 7.53(f), the fees are payable in advance.

§ 7.95 Fee schedule.

(a) Except as provided in paragraph (j) of this section search for a record under Subpart F of this part, when required, including making it available for inspection	$2.00
(b) Copies of documents by photocopy or similar method:	
Each page not larger than 11 x 17 in.:	
First page	.25
Each additional page	.05
(c) Copies of documents by typewriter, each page	2.00
(d) Certified copies of documents:	
(1) With Department of Transportation seal	3.00
(2) True copy, without seal	1.00
(e) Photographs:	
(1) Black and White print (from negative)	1.25
(2) Black and White print (from print)	3.15
(3) Color print (from negative)	3.50
(4) Color print (from print)	6.25
(f) Duplicate data types—each reel of tape or fraction thereof	36.00

The applicant must furnish the necessary number of blank magnetic tapes. The tapes must be compatible for use in the supplier's computer system, ½ inch wide and 2,400 feet long, and must be capable of recording data at a density of 556 or 800 characters per inch. Unless otherwise designated, the tapes will be recorded at 556 CPI density. The Department of Transportation is not responsible for damaged tape. However, if the applicant furnishes a replacement for a damaged tape, the duplication process is completed at no additional charge.

(g) Microreproduction fees are as follows:	
(1) Microfilm copies, each 100-foot roll or less	$3.75
(2) Microfiche copies, each standard size sheet (4"x 6", containing up to 65 frames)	.15
(h) Data processed record, each 1,000 lines or fraction thereof	1.00
(i) Preprinted materials, shelf stock, on color standard sizes: (1) Each page (excluding blanks)	.06

(j) Other records: The fee for a copy of a record not described in paragraphs (b) through (i) of this section will be supplied on request. The amount of that fee will be the cost of producing and handling.

(k) The fee for a search and copy of any record where the cost will obviously be more than $2 will be determined in accordance with the policy of the Freedom of Information Act.

§ 7.97 Services performed without charge or at a reduced charge.

(a) No fee is charged for time spent in preparing correspondence related to a request and in making determinations pursuant to § 7.81.

(b) No fee is charged for documents furnished in response to:

(1) A request from an employee or former employee of the Department for copies of personnel records of the employee;

(2) A request from a member of Congress for his official use;

(3) A request from a State, territory, U.S. possession, county or municipal government, or an agency thereof;

(4) A request from a court that will serve as a substitute for the personal court appearance of an officer or employee of the Department;

(5) A request from a foreign government or an agency thereof, or an international organization.

(c) Documents will be furnished without charge or at a reduced charge, if the Director of Public Affairs, or the head of the operating administration concerned, as the case may be, determines that waiver or reduction of the fee is in the public interest, because furnishing the information can be considered as primarily benefiting the general public. Examples of requests that may fall within this paragraph are reasonable requests from groups engaged in a nonprofit activity designed for the public safety, health, or welfare; schools; and students engaged in study in the field of transportation.

§ 7.99 Transcripts.

Transcripts of hearings and oral argument are available for inspection. Where transcripts are prepared by a nongovernment contractor, and the contract permits the Department to handle the reproduction of further copies, the provisions of Subpart I apply. Where the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies should be purchased directly from the reporting service.

§ 7.101 Alternate sources of information.

In the interest of making documents of general interest publicly available at as reasonable a cost as possible, alternate sources are arranged whenever practicable. In appropriate instances, material that is published and offered for sale may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; the Commerce Department's National Technical Information Service (NTIS), Springfield, Va. 22151; the National Audio-Visual Center, National Archives and Records Service, General Services Administration, Washington, D.C. 20405; or the Consumer Product Information Coordinating Center, General Services Administration, Washington, D.C. 20407.

Appendix A—Office of the Secretary

1. *General.* This appendix describes the location and hours of operation of the document inspection facility of the Office of the Secretary (OST); the kinds of records that are available for public inspection and copying at the facility; and the procedures by which members of the public may make requests for records.

2. *Document Inspection Facility.* The document inspection facility for the Office of the Secretary is maintained by the Director of Public Affairs, Room 10106, Nassif Building, 400 Seventh Street, SW., Washington, D.C. This facility is open to the public from 9 a.m. to 5:30 p.m. local time, Monday through Friday except Federal holidays.

3. *Records available through the document inspection facility.* The following records are available through the document inspection facility:

(a) Any material issued by the Office of the Secretary and published in the Federal Register, including regulations.

(b) Final opinions (including concurring or dissenting opinions) and orders made in the adjudication of cases and issued from within the Office of the Secretary.

(c) Any policy or interpretation issued within the Office of the Secretary, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Any administrative staff manual or instruction to staff, issued from within the Office of the Secretary, that affects any member of the public, including the prescribing of any standard, procedure, or policy that when implemented requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(e) *DOT Orders.* DOT orders which are issued by the Department of Transportation and used primarily to promulgate internal DOT policy, instructions, and general guidance.

(f) *DOT Notices.* DOT notices which are issued by the Department of Transportation and contain short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

(g) *OST Orders.* OST orders which are issued by the Office of the Secretary and used primarily to promulgate internal OST policy, instructions, and general guidance.

(h) *OST Notices.* OST notices which are issued by the Office of the Secretary and contain short-term instructions or information which is expected to remain in effect for less than 90 days or for a predetermined period of time normally not to exceed one year.

4. *Requests for records under Subpart E of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, may submit his request in writing to the Director of Public Affairs, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

[Amdt. 7-10, 40 FR 20276, May 9, 1975]

Appendix B—United States Coast Guard

1. *General.* This appendix describes the document inspection facilities of the U.S. Coast Guard, the kinds of records that are available for public inspection and copying at those facilities and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facilities.* The document inspection facilities are located at

the offices of the Commandant and District Commanders. These facilities are open to the public during regular working hours at the following addresses:

Commandant (A), U.S. Coast Guard, Washington, D.C. 20591. The facility is located at Coast Guard Headquarters, Office of Public and International Affairs, 400 7th Street, SW.
District Office, Commander, 1st Coast Guard District, 150 Causeway Street, Boston, Mass. 02114.
Commander, 2d Coast Guard District, Federal Building, 1520 Market Street, St. Louis, Mo. 88102.
Commander, 3d Coast Guard District Governors Island, New York, New York 10004.
Commander, 5th Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Va. 23705.
Commander, 7th Coast Guard District, Federal Building, Room 1012, 51 SW. First Ave., Miami, Florida.
Commander, 8th Coast Guard District, Customhouse, New Orleans, La. 70130.
Commander, 9th Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199.
Commander, 11th Coast Guard District, Heartwell Building, 19 Pine Avenue, Long Beach, Calif. 90802.
Commander, 12th Coast Guard District, 630 Sansome Street, San Francisco, Calif. 94126.
Commander, 13th Coast Guard District, 618 Second Avenue, Seattle, Wash. 93104.
Commander, 14th Coast Guard District, P.O. Box 48, FPO San Francisco 96610.
Commander, 17th Coast Guard District, FPO Seattle 98771.

3. Records available at document inspections facilities.

(a) The following records are available at any U.S. Coast Guard document inspection facility:

(1) Final opinions and orders made in the adjudication of cases by the Commandant, U.S. Coast Guard.

(2) U.S. Coast Guard numbered publications that affect any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(b) Opinions and orders of administrative law judges are available at the document inspection facility of the Office of the Commandant and the district in which the administrative law judge is located.

(c) Policies and interpretations issued within the U.S. Coast Guard (including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation) are available at the document inspection facility of the Office of the Commandant.

(d) An index of the records located at each facility is maintained at that facility.

(e) The records and the index may be inspected, at the facility, without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart H of this part.

4. Requests for identifiable records under Subpart E of this part. Each person desiring to inspect a record, or obtain a copy thereof, must submit his request in writing to the U.S. Coast Guard office from which such record may be made available. The addresses of the offices of the Commandant and District Commanders are listed in section 2 of this appendix. If the appropriate office to submit a request for a particular record is unknown, the request may be submitted to the Office of the Commandant at the address listed in section 2 of this appendix. The following table gives illustrations of types of records and specifies where requests for such records are appropriately addressed:

(a) Examples of records for which requests may properly be made to either the Office of the Commandant, U.S. Coast Guard or office of the appropriate District Commander include the following:

(1) Marine casualty investigation records.

(2) Records of certificates and licenses issued.

(3) Merchant vessel inspection records.

(4) Records of merchant vessel documentation and recording of sales and other dispositions.

(5) Records of Coast Guard property and contracts.

(b) Examples of records for which requests may properly be made to the Office of the Commandant, U.S. Coast Guard include the following:

(1) Central files of merchant seamen.

(2) Merchant vessel shipping articles.

(3) Merchant vessel equipment approvals.

(4) Merchant Marine Council proceedings.

(5) Recreational boating records.

(6) Great Lakes Pilotage records.

(7) Records pertaining to bridges over navigable waters.

(8) Central files of Coast Guard personnel.

(9) Coast Guard courts-martial records.

(10) Coast Guard vessel and shore station log books more than 1 year old on January 1 of the year the request is made.

(c) Examples of records for which requests may properly be made to the office of the appropriate District Commander include the following:

(1) Navigation and Vessel Inspection penalty action records.

(2) Search and rescue records.

(3) Coast Guard vessel and shore station log books for the current calendar year and the calendar year immediately preceding the current year.
(4) Port safety and waterfront facility records.
(5) Aids to navigation records.
(6) Records of bridges over navigable waters.
(7) Merchant vessel logbooks and shipping articles.
(8) Shipment and discharge of seamen records.
(9) Shipyard and factory inspection records.

5. Officials having initial authority to deny requests. The following officials have authority to make initial determinations to deny requests for records:
(a) District Commanders or their designees including:
(1) Commander, First Coast Guard District.
(2) Commander, Second Coast Guard District.
(3) Commander, Third Coast Guard District.
(4) Commander, Fifth Coast Guard District.
(5) Commander, Seventh Coast Guard District.
(6) Commander, Eighth Coast Guard District.
(7) Commander, Ninth Coast Guard District.
(8) Commander, Eleventh Coast Guard District.
(9) Commander, Twelfth Coast Guard District.
(10) Commander, Thirteenth Coast Guard District.
(11) Commander, Fourteenth Coast Guard District.
(12) Commander, Seventeenth Coast Guard District.
(b) Coast Guard Headquarters officials or their designees including:
(1) Chief of Staff.
(2) Chief, Office of Public and International Affairs.
(3) Chief, Office of Boating Safety.
(4) Chief, Office of Research and Development.
(5) Chief, Office of Engineering.
(6) Chief, Office of Comptroller.
(7) Chief, Office of Civil Rights.
(8) Chief, Office of the Chief Medical Officer.
(9) Chief, Office of Chief Counsel.
(10) Chief, Office of Merchant Marine Safety.
(11) Chief, Office of Operations.
(12) Chief, Office of Personnel.
(13) Chief, Office of Reserve.
(14) Chief, Office of Marine Environment and Systems.

6. Reconsideration of determinations not to disclose records. Any person who has been notified that a record or part of a record he has requested cannot be disclosed may apply in writing, to the Commandant, U.S. Coast Guard, for reconsideration of that request. The decision of the Commandant or his designee is administratively final.

(5 U.S.C. 552 as amended by Pub. L. 93-502, 88 Stat. 1565; 49 CFR 7.1(d)).

[Amdt. 7-10, 40 FR 20277, May 9, 1975, as amended by CGD 78-024A, 43 FR 48646, Oct. 19, 1978]

Appendix C—Federal Aviation Administration

1. *General.* This appendix describes the document inspection facilities of the Federal Aviation Administration, the kinds of records that are available for public inspection and copying at these facilities, and the procedures by which members of the public may make requests for reasonably described records.

2. *Document inspection facilities.* Document inspection facilities are maintained for FAA Headquarters, each FAA regional office, the Aeronautical Center, and the National Aviation Facilities Experimental Center. The document inspection facility for the European Region is located at FAA Headquarters. These facilities are open to the public during regular working hours at the following addresses:

FAA Headquarters, 800 Independence Avenue, SW, Washington, D.C. 20590.
Alaskan Region, 632 Sixth Avenue, Anchorage, Alaska 99501.
Central Region, 601 East 12th Street, Kansas City, Mo. 64106.
Southern Region, 3400 Whipple Street, East Point, Ga. (Mailing Address: Post Office Box 20636, Atlanta, Ga. 30320).
Southwest Region, 4400 Blue Mound Road (Mailing Address: Post Office Box 1689), Fort Worth, Tex. 76101.
Western Region, 5651 West Manchester Avenue (Mailing Address: Post Office Box 92007), Los Angeles, Calif. 90045.
Eastern Region, JFK International Airport, New York, N.Y. 11480.
Pacific Region, 1833 Kalakaua Avenue (Mailing Address: Post Office Box 4009), Honolulu, Hawaii 96812.
Aeronautical Center, 6400 South MacArthur Boulevard (Mailing Address: Post Office Box 25082), Oklahoma City, Okla. 73125.
National Aviation Facilities Experimental Center, Tilton Road, Route 563 (near Pomona, N.J.) (Mailing Address: Atlantic City, N.J. 08405).

New England Region, 154 Middlesex Street, Burlington, MA 01803.
Great Lakes Region, 3166 Des Plaines Avenue, Des Plaines, IL 60018.
Rocky Mountain Region, 10255 East 25th Avenue, Aurora, CO 80010.
Northwest Region, FAA Building, Boeing Field, Seattle, WA 98108.

3. Documents available under Subpart E at document inspection facilities. (a) The following records under Subpart E of this part are available at Federal Aviation Administration document inspection facilities:

(1) Final opinions and orders made in the adjudication of cases by the Administrator, Federal Aviation Administration.

(2) Policies and interpretations, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation. All such policies and interpretations made by the Administrator, Deputy Administrator, Associate Administrators, Directors and Heads of Offices are available at the FAA Headquarters document inspection facility; only those policies and interpretations made by the Administrator, Deputy Administrator and the Regional or Center Director concerned shall be available at Regional and Center document inspection facilities.

(3) Administrative staff manuals or instructions to staff that affect any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public. Such documents are available at the inspection facility of the organizational unit which has issued them.

(b) An index of the records located at each document inspection facility is maintained at that facility.

(c) The records and the index may be inspected, at the facility, without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart H of this part.

4. Requests for reasonably described records under Subpart E of this part. Each person desiring to inspect a record, or obtain a copy thereof, must submit his request in writing to the Assistant Administrator, Office of Information Services, FAA Headquarters, or the Director of the Region or Center in which it is located. The addresses of FAA Headquarters and the Regions and Centers are listed in paragraph 2 of this appendix. If the location of the record is not known, the request may be submitted to the Assistant Administrator, Office of Information Services, FAA Headquarters. Each request must be accompanied by the appropriate fee prescribed in Subpart I of this part. In some instances, the amount of the fee will have to be determined after the request has been received due to the circumstances peculiar to each case. The following table gives illustrations of types of records and where they are located:

a. Records pertaining to the issue, amendment, suspension or revocation of certificates, permits, authorizations, and approvals such as:

(1) Airman certificates and ratings for pilots, flight instructors, flight navigators, flight engineers, aircraft dispatchers, mechanics, repairmen, air traffic control operators, parachute riggers and ground instructor certificates are maintained at the Aeronautical Center.

(2) Aircraft registration certificates, and airworthiness certificates are maintained at the Aeronautical Center.

(3) Aircraft type certificates and production certificates are maintained at the regional office within which the issuance was made.

(4) Ferry permits and special flight authorizations are maintained at the district office of the region within which the issuance was made.

(5) Air carrier operating certificates, commercial operator certificates, agricultural aircraft operator certificates, repair station certificates, parachute loft certificates, pilot school certificates, and mechanic school certificates are maintained at the district office of the region within which the certification was taken.

b. Records of designations of representatives of the Administrator are located at FAA Headquarters.

c. Records covering civil rights violations determinations under title VI Civil Rights Act of 1964 are located at FAA Headquarters.

d. Records relating to Federal-aid Airport Grants are located at the regional office within which the grant was made.

e. Records of approvals of navigational facilities under FAR Part 171 are located at the regional office within which the approval was issued.

f. Records relating to civil penalty actions and seizure of aircraft are located at the regional office within which the action was taken.

5. Reconsideration of determination not to disclose records. Any person to whom a record is not made available within the time limits set forth in § 7.21 or any extension thereof under § 7.25 of Subpart C, and any person who has been notified that a record he has requested cannot be disclosed may apply, in writing, to the Assistant Administrator, Office of Information Services at

FAA Headquarters, for reconsideration of that request. Application for reconsideration must be made within 60 days from the expiration of the time limitations set forth in Subpart C or the receipt of denial and follow the procedures and requirements set forth in Subpart G. For all purposes, including that of judicial review, the decision of the Assistant Administrator, Office of Information Services is administratively final as the decision of the Federal Aviation Administration.

[Amdt. 7-10, 40 FR 20277, May 9, 1975]

Appendix D—Federal Highway Administration

1. *General.* This appendix describes the location and hours of operation of document inspection facilities of the Federal Highway Administration (FHWA); the kinds of records that are available for public inspection and copying at these facilities; and the procedures by which members of the public may make requests for records.

2. *Document Inspection Facilities.* Document inspection facilities are maintained at the FHWA Headquarters office, each FHWA regional office, and each FHWA division office. These facilities are open to the public during regular FHWA working hours which are included parenthetically after each address below. Written requests for information should be sent to the appropriate office, and the envelope in which the request is sent must be prominently marked with the letters "FOIA."

WASHINGTON HEADQUARTERS

Records Officer, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590 (7:45-4:15 Eastern Time).

REGIONAL OFFICES

Regional Federal Highway Administrator, Region 1, Federal Highway Administration, 4 Normanskill Boulevard (Elsmere), Delmar, NY 12504 (8-4:30 Eastern Time).

Regional Federal Highway Administrator, Region 3, Federal Highway Administration, 31 Hopkins Plaza, Baltimore, MD 21201 (8-4:30 Eastern Time).

Regional Federal Highway Administrator, Region 4, Federal Highway Administration, 1720 Peachtree Road NW., Atlanta, GA 30309 (7:45-4:15 Eastern Time).

Regional Federal Highway Administrator, Region 5, Federal Highway Administration, 18209 Dixie Highway, Homewood, IL 60430 (8-4:30 Central Time).

Regional Federal Highway Administrator, Region 6, Federal Highway Administration, 819 Taylor Street, Fort Worth, TX 76102 (8-4:30 Central Time).

Regional Federal Highway Administrator, Region 7, Federal Hignway Administration, 6301 Rockhill Road, Kansas City, MO 64131 (7:45-4:15 Central Time).

Regional Federal Highway Administrator, Region 8, Federal Highway Administration, P.O. Box 25246, Building 40, Denver Federal Center, Denver, CO 80225 (7:45-4:15 Mountain Time).

Regional Federal Highway Administrator, Region 9, Federal Highway Administration, 450 Golden Gate Avenue, Box 36096, San Francisco, CA 94102 (7:45-4:15 Pacific Time).

Regional Federal Highway Administrator, Region 10, Federal Highway Administration, Rm. 412, Mohawk Bldg., 222 SW. Morrison St., Portland, OR 97204 (8:00-4:45 Pacific Time).

Regional Engineer, Region 15, Federal Highway Administration, 1000 North Glebe Road, Arlington, VA 22201 (7:45-4:15 Eastern Time).

DIVISION OFFICES

Alabama, 441 High Street, Montgomery, AL 36104 (7:45-4:30 Central Time).

Alaska, Federal Building, 709 West Ninth Street, Juneau, AK 99801 (8-4:30 Pacific Time).

Arizona, 3500 N. Central Avenue, Suite 201, Phoenix, AZ 85012 (8-4:30 Mountain Time).

Arkansas, Room 3128, Federal Office Building, 700 West Capitol Avenue, Little Rock, AR 72201 (7:45-4:30 Central Time).

California, Federal Bldg., 2nd Floor, 801 I Street, Sacramento, CA 94814 (7:45-4:30 Pacific Time).

Colorado, 10488 W. 6th Place, Denver, CO 80215 (7:45-4:15 Mountain Time).

Connecticut, 990 Wethersfield Avenue, Hartford, CT 06114 (8-4:30 Eastern Time).

Delaware, Federal Office Bldg., 2nd Floor, 300 South New Street, Dover, DE 19901 (8-4:30 Eastern Time).

District of Columbia, 425 13th Street, NW., Washington, DC 20004 (7:45-4:15 Eastern Time).

Florida, Ackerman Bldg., 223 W. College Ave., Tallahassee, FL 32301 (8-4:30 Eastern Time).

Georgia, Suite 700, 1422 Peachtree Street, NW., Atlanta, GA 30309 (8-4:30 Eastern Time).

Hawaii, Pacific International Gold Bond Bldg., 677 Ala Moana Blvd., Suite 613, Honolulu, HI 96813 (7:15-4:15 Hawaii Time, 9:15-6:15 Pacific Time).

Idaho, 3010 W. State Street, Boise, ID 83703 8-5:00 Mountain Time).

Illinois, 3085 East Stevenson Drive, Springfield, IL 62708 (7:30-4:15 Central Time).

Indiana, I.S.T.A. Center, Room 707, 150 W. Market St., Indianapolis, IN 46204 (7:30-4 Eastern Time).

Iowa, 105 Sixth Street, Ames, IA 50010 (7:45–4:30 Central Time).

Kansas, 1263 Topeka Avenue, Topeka, KS 66612 (8–4:30 Central Time).

Kentucky, 151 Elkhorn Court, Frankfort, KY 40601 (8:00–4:45 Eastern Time).

Louisiana, Federal Bldg., Room 239, 750 Florida St., Baton Rouge, LA 70801 (8–4:30 Central Time).

Maine, Federal Building, U.S. Post Office, Room 614, 40 Western Avenue, Augusta, ME 04330 (7:30–4 Eastern Time).

Maryland, The Rotunda, Suite 220, 711 West 40th Street, Baltimore, MD 21211 (8–4:30 Eastern Time).

Massachusetts, John F. Kennedy Federal Building, Government Center, Room 612, Boston, MA 02203 (8:15–4:15 Eastern Time).

Michigan, Federal Building, 315 West Allegan Street, Room 211, Lansing, MI 48901 (8–4:45 Eastern Time).

Minnesota, Metro Square Building, Suite 490, Seventh & Robert Streets, St. Paul, MN 55101 (7:30–4 Central Time).

Mississippi, 666 North Street, Suite 105, Jackson, MS 39202 (7:45–4:15 Central Time).

Missouri, 209 Adams Street, Jefferson City, MO 65101 (7:45–4:15 Central Time).

Montana, 501 N. Fee Street, Helena, MT 59601 (7:45–4:30 Mountain Time).

Nebraska, 1701 South 17th Street, Lincoln, NE 68502 (8–4:30 Central Time).

Nevada, 106 East Adams Street, Carson City, NV 89701 (7:45–4:30 Pacific Time).

New Hampshire, Federal Building, 55 Pleasant Street, Concord, NH 03301 (8–4:45 Eastern Time).

New Jersey, Suburban Square Building, 25 Scotch Road, Trenton, NJ 08628 (8–4:30 Eastern Time).

New Mexico, 117 U.S. Courthouse, Santa Fe, NM 87501 (7:30–4:30 Mountain Time).

New York, Leo W. O'Brien Federal Building, 9th Floor, Albany, NY 12207 (8–4:30 Eastern Time).

North Carolina, 310 New Bern Avenue, Raleigh, NC 27611 (8–4:30 Eastern Time).

North Dakota, New Federal Bldg., P.O. Box 1755, Bismarck, ND 58501 (7:45–4:30 Central Time).

Ohio, Bryson Building, Room 333, Columbus, OH 43215 (8–4:30 Eastern Time).

Oklahoma, 2409 North Broadway, Oklahoma City, OK 73103 (8–4:45 Central Time).

Oregon, Standard Insurance Building, 477 Cottage Street, NE Salem, OR 97308 (7:45–4:30 Pacific Time).

Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108 (8–4:30 Eastern Time).

Puerto Rico, Caso Building, Room 805, 1225 Ponce de Leon Avenue, San Juan, PR 00907 (8–4:30 Atlanta Time—7–3:30 Eastern Time).

Rhode Island, Gardner Building, Third Floor, 40 Fountain Street, Providence, RI 02903 (8–4:30 Eastern Time).

South Carolina, 2001 Assembly Street, Suite 203, Columbia, SC 29201 (8:15–4:45 Eastern Time).

South Dakota, P.O. Box 700, Federal Office Building, Pierre, SD 57501 (8–5 Central Time).

Tennessee, Suite 236, 4004 Hillsboro Road, Nashville, TN, 37215 (8–4:30 Central Time).

Texas, Rm. 826, Federal Office Building, 300 East Eighth Street, Austin, TX 78701 (7:45–4:35 Central Time).

Utah, Federal Bldg., 125 South State Street, Salt Lake City, UT 84111 (7:45–4:30 Mountain Time).

Vermont, Federal Building, Montpelier, VT 05602 (8–4:30 Eastern Time).

Virginia, Federal Building, 10th Floor, 400 North Eighth Street, Richmond, VA 23240 (7:45–4:45 Eastern Time).

Washington, 1007 South Washington Street, Olympia, WA 98507 (8–5:00 Pacific Time).

West Virginia, Rm. 2000 Federal Office Building, 500 Quarrier Street, Charleston, WV 25301 (8–4:30 Eastern Time).

Wisconsin, 4502 N. Vernon Boulevard, Madison, WI 53705 (7:45–4:30 Central Time).

Wyoming, O'Mahoney Federal Center 2120 Capitol Street, Cheyenne, WY 82001 (7:45–4:45 Mountain Time).

3. *Records Available Through Document Inspection Facilities.* (a) The following records are available through the FHWA Headquarters document inspection facility:

(1) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued from within the Federal Highway Administration.

(2) Any policy or interpretation issued within the Federal Highway Administration, including any policy or interpretation concerning a particular factual situation, if that policy of interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(b) The following records are available through all FHWA document inspection facilities:

(1) *FHWA Orders.* These orders are issued by the Federal Highway Administration and used primarily to promulgate internal FHWA policy, instructions, and general guidance.

(2) *FHWA Notices.* These notices are issued by the Federal Highway Administration and contain short term instructions or information which is expected to remain in effect for less than 90 days or for a prede-

termined period of time normally not to exceed one year.

(3) *FHWA Bulletins.* These bulletins are issued by the Federal Highway Administration and are used to promulgate one time announcements or transmit reports, publications, and other similar material.

(4) *FHWA/NHTSA Orders.* These are orders issued jointly by the Federal Highway Administration and the National Highway Traffic Safety Administration and contain policies, procedures, and information pertaining to the joint administration of the State and Community Highway Safety Program.

(5) *FHWA Manuals.* These manuals are issued by the Federal Highway Administration and contain detailed procedures relating to policies and program responsibilities. They include the following:

(i) *Federal-Air Highway Program Manual.* This Manual contains policies, procedures, standards, and guides relating to the administration of the Federal-Air Highway Program and the Direct Federal Construction Program.

(ii) Organization Manual.

(iii) Administrative Manual.

(iv) External Audit Manual.

(v) Labor Compliance Manual.

(vi) Civil Rights Manual.

(vii) Highway Planning Program Manual.

(viii) Emergency Planning and Operations Manual.

(ix) Research and Development Program Manual.

(x) Right-of-Way Operations Manual.

(xi) Motor Carrier Safety Operations Manuals. These Manuals contain details of compliance programs, accident investigations, enforcement programs, and interpretations.

(6) *Highway Safety Standards.* These highway-related standards, issued by the Federal Highway Administration, apply to the aspects of State highway safety programs for which responsibility resides in the Federal Highway Administration under the Highway Safety Act of 1966 and delegations of authority by the Secretary of Transportation.

(7) Motor Carrier Safety Administrative Rulings.

(8) Motor Carrier Safety Waivers From Regulations.

(9) Indexes for the above records.

4. *Requests for Records under Subpart E of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, may submit his request, in writing, to the FHWA Records Officer at the address listed in paragraph 2 above. Each request is subject to the appropriate fee prescribed in Subpart H of this part.

5. *Determination not to disclose records.* The FHWA Records Officer (HMS-10) in the Washington Headquarters is the only official authorized to deny requests for the disclosure of records for all FHWA organization elements, both Headquarters and field.

6. *Reconsideration of determination not to disclose records.* Any person who has been notified that a record or any part of a record he has requested cannot be disclosed, may apply, in writing, to the Associate Administrator for Administration, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590 for reconsideration of his request. The decision of the Associate Administrator for Administration is administratively final.

[Amdt. 7-10, 40 FR 20277, May 9, 1975]

Appendix E—Federal Railroad Administration

1. *General.* This appendix describes the document inspection facility of the Federal Railroad Administration, the kinds of records that are available for public inspection and copying at that facility and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facility.* The document inspection facility is maintained at the headquarters of the Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. This facility is open to the public during regular working hours.

3. *Records available at the document inspection facility.* The following records are maintained at the document inspection facility:

(a) Any material issued by the Federal Railroad Administration and published in the Federal Register, including regulations.

(b) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued from within the Federal Railroad Administration. Included are opinions and orders issued under the Safety Appliance Acts, Hours of Service Act, Signal Inspection Act, Locomotive Inspection Act, Accident Reports Act, and the Federal Railroad Safety Act.

(c) Any policy or interpretation issued within the Federal Railroad Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(d) Any administrative staff manual or instruction to staff, issued from within the Federal Railroad Administration, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of perform-

ance of any activity by any member of the public.

(e) Public notice of pending administrative actions.

(f) Office of Safety Annual Report.

(g) Accident Bulletin.

(h) Rail-Highway Grade-Crossing Bulletin.

(i) Locomotive Specifications.

(j) Documents related to loans, loan guarantees, or grant programs conducted by the Federal Railroad Administration.

(k) An index to the material described in (a) through (d).

The records and the index may be inspected, at the facility, without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart H of this part.

4. *Requests for identifiable records under Subpart E of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, must submit his request in writing to the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Each request must be accompanied by the appropriate fee prescribed in Subpart H of this part.

5. *Reconsideration of determination not to disclose Records.* Any person to whom a record has not been made available within the time limits established by this part, and any person who has been given a determination that a record he has requested will not be disclosed, may apply, in writing, to the Federal Railroad Administrator, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, for reconsideration of his request. For all purposes, including that of judicial review, the decision of the Administrator is administratively final.

[Amdt. 7-10, 40 FR 20277, May 9, 1975]

Appendix F—St. Lawrence Seaway Development Corporation

1. *General.* This appendix describes the document inspection facility of the St. Lawrence Seaway Development Corporation, the kinds of records that are available for public inspection and copying at that facility, and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facility.* The document inspection facility of the Saint Lawrence Seaway Development Corporation is maintained at its headquarters building at Massena, New York. This facility is open to the public during regular working hours.

3. *Records available at the document inspection facility.* The following records are located at the document inspection facility:

(a) Final opinions (including concurring and dissenting opinions, if any) and orders made in the adjudication of cases and issued from within the St. Lawrence Seaway Development Corporation.

(b) Any policy or interpretation issued within the St. Lawrence Seaway Development Corporation, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have precedential value in any case involving a member of the public in a similar situation.

(c) Any administrative staff manual or instruction to staff, issued from within the St. Lawrence Seaway Development Corporation, that affects any member of the public, including the prescribing of any standard, procedure, or policy that, when implemented, requires or limits any action of any member of the public or prescribes the manner of performance of any activity by any member of the public.

(d) An index to the material described in (a) through (c).

The records and the index may be inspected, at the facility, without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart H of this part.

4. *Requests for identifiable records under Subpart E of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, must submit his request in writing to the Director of Administration, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York, 13662. Each request must be accompanied by the appropriate fee prescribed in Subpart H of this part. The decision of the Administrator, Assistant Administrator or the General Counsel to withhold a record is administratively final.

[32 FR 9284, June 29, 1967, as amended by Amdt. 7-10, 40 FR 20277, May 9, 1975]

Appendix G—Urban Mass Transportation Administration

1. *General.* This appendix describes the document inspection facility of the Urban Mass Transportation Administration, the kinds of records which are available for public inspection and copying at that facility, and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facility.* The document inspection facility of the Urban Mass Transportation Administration is maintained in Room 9330 at the headquarters of the Department of Transportation Building (Nassif Building), 400 Seventh Street, S.W., Washington D.C. 20590. This facility is open to the public from 8:30 a.m. to 5:00 p.m.

3. *Records available through document inspection facility.* a. An index to, and copies of, the internal and external directives of the Urban Mass Transportation Administra-

tion. The records and the index may be inspected, at the facility, without charge. Copies of records may be obtained upon payment of the fee prescribed in Subpart I of this part.

b. Any proposed or final regulation issued by the Urban Mass Transportation Administration, and any background information for these regulations.

4. *Requests for identifiable records under Subpart E of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, must submit the request in writing to the Director of Public Affairs, Urban Mass Transportation Administration, Room 9330 of the Department of Transportation building (Nassif Building), 400 Seventh Street, SW., Washington, D.C. 20590. Each request must be accompanied by the appropriate fee prescribed in Subpart I of this part.

5. *Reconsideration of determinations not to disclose records.* Any person to whom a record is not made available within the time limits set out in Subpart C of this part, and any person who has been notified that a record that person has requested cannot be disclosed, may apply, in writing, to the Administrator, Urban Mass Transportation Administration, Room 9324 of the Department of Transportation Building (Nassif Building), 400 Seventh Street, SW., Washington, D.C. 20590, for reconsideration of the request. The decision of the Administrator is administratively final.

[44 FR 65765, Nov. 15, 1979]

Appendix H—National Highway Traffic Safety Administration

1. *General.* This appendix describes the document inspection facilities of the National Highway Traffic Safety Administration (NHTSA), the kinds of records that are available for public inspection and copying at these facilities, and the procedures by which members of the public may make requests for identifiable records.

2. *Document inspection facilities.* Document inspection facilities are maintained for NHTSA Headquarters and each NHTSA regional office. These facilities are open to the public during regular working hours at the following addresses:

Washington Headquarters:

National Highway Traffic Safety Administration, Office of Administrative Services, Room 5108, 400 Seventh Street SW, Washington, DC 20591.

National Highway Traffic Safety Administration, Docket Section, Room 4223, 400 Seventh Street SW, Washington, DC 20591. (Material covered by paragraph 3(c) only.)

REGIONAL OFFICES

Region 1—Regional Administrator, NHTSA, Transportation Systems Center, 55 Broadway, Cambridge, MA 02412.
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region II—Regional Administrator, NHTSA, 4 Normanskill Boulevard, Delmar, NY 12054.
New Jersey, New York, and Puerto Rico.

Region III—Regional Administrator, NHTSA, Room 817, Federal Building, 31 Hopkins Plaza, Baltimore, MD 21201.
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Region IV—Regional Administrator, NHTSA, Suite 400, 1720 Peachtree Road NW., Atlanta, GA 30309.
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Region V—Regional Administrator, NHTSA, 18209 Dixie Highway, Homewood, IL 60430.
Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region VI—Regional Administrator, NHTSA, Room 8A42, 819 Taylor Street, Fort Worth, TX 76102.
Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region VII—Regional Administrator, NHTSA, Post Office Box 7186, Country Club Station, Kansas City, MO 64113.
Iowa, Kansas, Missouri, and Nebraska.

Region VIII—Regional Administrator, NHTSA, Room 107, Building 40, Denver Federal Center, Denver, CO 80225.
Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region IX—Regional Administrator, NHTSA, 450 Golden Gate Avenue, Box 36096, San Francisco, CA 94102.
Arizona, California, Hawaii, and Nevada.

Region X—Regional Administrator, NHTSA, Room 301, Mohawk Building, 222 Southwest Morrison Street, Portland, OR 97204.
Alaska, Idaho, Oregon, and Washington.

3. Records available at document inspection facilities.

(a) The following records are available at the NHTSA Headquarters document inspection facility:

(1) Final opinions and orders made in the adjudication of cases and issued from within the National Highway Traffic Safety Administration.

(2) Any policy or interpretation issued within the National Highway Traffic Safety Administration, including any policy or interpretation concerning a particular factual situation, if that policy or interpretation can reasonably be expected to have prece-

dential value in any case involving a member of the public in a similar situation.

(3) NHTSA test reports that assess manufacturers' compliance with Federal Motor Vehicle Safety Standards.

(4) Investigative reports concerning compliance with standards and possible safety-related defects.

(5) Summaries and detailed reports of motor vehicle recall campaigns.

(6) Consumer information for domestic and foreign motor vehicles on "Vehicle Stopping Distance", "Acceleration and Passing Ability", and "Tire Reserve Load."

(7) Consumers' complaint letters regarding motor vehicles.

(8) Contractors' technical reports documenting the results of research performed for NHTSA pursuant to contract.

(9) Multidisciplinary case studies on the causes of selected motor vehicle accidents.

(b) The following records are available at all NHTSA document inspection facilities:

(1) *NHTSA Orders.* These orders are issued by National Highway Traffic Safety Administration and contain policy, instructions, and general procedures.

(2) *NHTSA Notices.* These notices are issued by National Highway Traffic Safety Administration and transmit one-time or short-term announcements or temporary directives (9 days or less).

(3) *Motor Vehicle Safety Standards.* These standards, issued by National Highway Traffic Safety Administration, apply to new motor vehicles and equipment thereon.

(4) *Highway Safety Standards.* These standards, issued by National Highway Traffic Safety Administration, apply to State highway safety programs.

(5) *State Highway Programs.* Reports on State highway programs presenting the proposed implementation of Federal Highway Standards on an annual and long-range basis. These reports are available at the NHTSA Headquarters document inspection facility and the appropriate Regional Administrator's Office.

(c) Informal interpretations and opinions concerning provisions of the National Traffic and Motor Vehicle Safety Act of 1966 and regulations and standards issued thereunder which have been given to members of the public by National Highway Traffic Safety Administration officials are available at the NHTSA Docket Section.

4. *Request for identifiable records under Subpart E of this part.* Each person desiring to inspect a record, or to obtain a copy thereof, may submit his request, in writing, to any NHTSA document inspection facility. If that facility does not have custody of the record, it will forward the request to the appropriate office. Each request must be accompanied by the appropriate fee prescribed in Subpart H of this part.

5. *Reconsideration of determinations not to disclose records.* Any person to whom a record is not made available within a reasonable time after his request, and any person who has been notified that a record he has requested cannot be disclosed, may apply, in writing, to the Associate Administrator for Administration, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20591, for reconsideration of his request. The decision of the Associate Administrator for Administration is administratively final.

(6) The fee for a search for a record or records identified by class or by subject is $6 per hour, and, pursuant to section 7.83 of this part, is payable before the release of the material. The Office of Administrative Services may reduce or eliminate the $3.00 search fee for a particular document pursuant to subpart H if the time involved in the search is negligible.

[Amdt. 7-4, 36 FR 430, Jan. 13, 1971, as amended at 36 FR 22813, Dec. 1, 1971; 37 FR 24114, Nov. 14, 1972; 38 FR 34112, Dec. 11, 1973]

PART 8—CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL

Sec.

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8.3 Applicability.
8.5 Definitions.
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8.23 Classified material transferred to the Department of Transportation.
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8.29 Industrial security.

AUTHORITY: E.O. 11652 (37 FR 5209), National Security Council Directive of May 17, 1972 (37 FR 10053), and secs. 3 and 9 of the Department of Transportation Act (49 U.S.C. 1652 and 1657).

SOURCE: 37 FR 28297, Dec. 22, 1972, unless otherwise noted.

§ 8.1 Scope.

This part sets forth procedures affecting the public, for the classification, declassification and availability of information, in implementation of Executive Order 11652, "Classification and Declassification of National Security Information and Material."

§ 8.3 Applicability.

The provisions of this part apply to all elements of the Department of Transportation including the National Transportation Safety Board.

§ 8.5 Definitions.

As used in this part—

"Classified information" means official information which requires protection against unauthorized disclosure in the interest of the national security of the United States and which has been so designated. The specific degree of protection required is designated by the following classification categories:

(a) *Top secret.* That information or material which requires the highest degree of protection and the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security.

(b) *Secret.* That information or material which requires a substantial degree of protection and the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security.

(c) *Confidential.* That national security information or material which requires protection and the unauthorized disclosure of which could reasonably be expected to cause damage to the national security.

"Classify" means to determine that official information requires, in the interest of national security, a specific degree of protection against unauthorized disclosure, coupled with a designation signifying that such a determination has been made.

"Declassify" means to determine that information no longer requires protection against unauthorized disclosure in the interest of national security. Material will be re-marked to reflect this determination.

"Downgrade" means to determine that classified information requires a lesser degree of protection against unauthorized disclosure in the interests of national security than that currently assigned. Material will be re-marked to reflect this determination.

§ 8.7 Spheres of responsibility.

(a) Pursuant to the provisions of section 7(B)(2) of Executive Order 11652, the Assistant Secretary for Administration is hereby designated as the senior staff officer of the Secretary of Transportation with assigned responsibilities to assure effective compliance with and implementation of the order, National Security Council Directives, and this part.

(b) In the discharge of these responsibilities, the Assistant Secretary for Administration shall be assisted by the Director of Investigations and Security who, in addition to other actions directed by this part, shall evaluate the overall application of and adherence to the security policies and requirements prescribed herein and who shall report his findings and recommendations to the Assistant Secretary for Administration, heads of administrations, Chairman, National Transportation Safety Board, and, as appropriate, to the Secretary.

(c) Secretarial Officers, heads of administrations, and the Chairman, National Transportation Safety Board, shall assure the effective administration of the provisions prescribed herein, that adequate personnel and funding are provided for this purpose, and that corrective actions which may be warranted are taken promptly.

§ 8.9 Security Review Committee.

(a) There is hereby established a Department of Transportation Security Review Committee which shall have authority to—

(1) Act on all suggestions and complaints not otherwise resolved with respect to the Department's administration of the Executive Order and implementing directives, including those regarding overclassification, failure to declassify, or delay in declassifying;

(2) Act on appeals of requests for classification reviews, and appeals of

requests for records under section 552 of Title 5, United States Code, (Freedom of Information Act), when the initial denial is based on continued classification of the record; and

(3) Recommend to the Secretary, when necessary, appropriate administrative action to correct abuse or violation of any provision of the Executive order and implementing directives.

(b) The Security Review Committee shall be composed of the Assistant Secretary for Administration who shall serve as Chairman, the General Counsel, and the Director of Investigations and Security. When matters affecting a particular administration or the National Transportation Safety Board are at issue, the Associate Administrator for Administration for that administration, the Chief of Staff for the U.S. Coast Guard, or the General Manager for the National Transportation Safety Board, as the case may be, shall participate as an ad hoc member, together with the Chief Counsel for the particular element.

(c) The Chairman shall submit to the Interagency Classification Review Committee quarterly reports of Departmental Committee actions on classification review requests, classification abuses, and unauthorized disclosure of classified information.

§ 8.11 Authority to classify information.

(a) Executive Order 11652 confers upon the Secretary of Transportation the authority to originally classify information as SECRET or CONFIDENTIAL with further authorization to delegate this authority.

(b) The following delegations of authority to originally classify information as "SECRET" or "CONFIDENTIAL", which may not be redelegated, are hereby made:

(1) *Office of the Secretary of Transportation.* The Under Secretary; Assistant Secretary for Policy and International Affairs; Assistant Secretary for Administration; Director of Investigations and Security; Director, Transportation Systems Center.

(2) *United States Coast Guard.* The Commandant; Assistant Commandant; Chief of Staff; Chief, Office of Marine Environment and Systems; Chief, Office of Operations; Chief, Intelligence Staff; Commander, Eastern Area; Commander, Western Area; Commanders, Coast Guard Districts; Commander, Coast Guard Activities Europe.

(3) *Federal Aviation Administration.* The Administrator; Deputy Administrator; Associate Administrator for Administration; Assistant Administrator for International Aviation Affairs; Director of Air Transportation Security; Regional Directors; Director, Aeronautical Center; Director, National Aviation Facilities Experimental Center.

(4) *National Transportation Safety Board.* Chairman of the Board; General Manager.

(c) Although the delegations of authority set out in paragraph (b) of this section are expressed in terms of positions, the authority is personal and is invested only in the individual occupying the position. The authority may not be exercised "by direction of" a designated official. The formal appointment or assignment of an individual to one of the identified positions or a designation in writing to act in the absence of one of these officials, however, conveys the authority to originally classify information as "Secret" or "Confidential."

(d) Previous delegations and redelegations of authority within the Department of Transportation to originally classify information "Top Secret," "Secret," or "Confidential" are hereby rescinded.

§ 8.13 Authority to downgrade or declassify.

Information originally classified by the Department may be specifically downgraded or declassified by the official authorizing the original classification or by his successor; by a supervisory official of either, or by higher authority; or by the Departmental Security Review Committee.

§ 8.15 Review of exempted and excluded material.

(a) *Background*—(1) *Classified material produced after June 1, 1972.* Executive Order 11652 establishes a General Declassification Schedule under which classified material produced after June 1, 1972, becomes automati-

cally downgraded and declassified at prescribed intervals. Exceptions to the General Declassification Schedule with respect to material produced after June 1, 1972, are—

(i) Material which is downgraded or declassified earlier than provided by the Schedule, based upon a predictable event or other development; and

(ii) Material which is exempt from automatic declassification because it may warrant protection for a period exceeding that provided by the Schedule.

Decisions to exempt material from the General Declassification Schedule may be made only by an official authorized to originally classify information as Top Secret, and only if the information falls within one of four categories established by the Executive order. Material which has been exempted from the General Declassification Schedule is subject to a mandatory classification review as specified in paragraph (b) of this section.

(2) *Classified material produced prior to June 1, 1972.* Classified material produced prior to June 1, 1972, and which was marked group 1, group 2, or group 3 in accordance with the provisions of Executive Order 10501, as amended (26 FR 8932, Sept. 22, 1961), or which is not group marked, is excluded from automatic declassification, but is subject to a mandatory classification review as specified in paragraph (b) of this section.

(b) *Requirement for classification review.* Classified material which is exempt from the General Declassification Schedule, and classified material which is excluded from automatic declassification shall be subject to a mandatory classification review for declassification purposes at any time after the expiration of 10 years from the date it was produced, provided that—

(1) A department or agency or a member of the public requests a review;

(2) The request describes the record with sufficient particularity to permit the record to be identified; and

(3) The record can be obtained with only a reasonable amount of effort.

(c) *Remarking.*—Material which no longer warrants classification as determined by the review shall be declassified, and so marked. Material which continues to warrant classification shall be marked to indicate that a review was conducted. Whenever possible, a date for automatic declassification shall be established and the material so marked.

§ 8.17 Procedures for submitting and handling requests for classification reviews.

(a) The Director of Investigations and Security, Office of the Secretary of Transportation, 400 Seventh Street SW, Washington, DC 20590, is hereby designated as the office to whom a member of the public or another department or agency should submit a request for a classification review of classified material produced by or under the primary cognizance of the Department. Elements of the Department which may receive a request directly shall immediately notify the Director.

(b) If the request for classification review involves material produced by or under the cognizance of the U.S. Coast Guard, the Federal Aviation Administration, or the National Transportation Safety Board, the Director shall forward the request to the headquarters security staff of the element concerned for action. If the request involves material produced by other Departmental elements, the Director shall serve as the office acting on the request.

(c) The office acting on the request shall—

(1) Immediately acknowledge receipt of the request and provide a copy of the correspondence to the Director. If a fee for search of records is involved pursuant to Part 7, Subpart H of the regulations of the Office of the Secretary (Part 7, Subpart H, of this subtitle), or, in the case of material of the National Transportation Safety Board, pursuant to the regulations of the National Transportation Safety Board (14 CFR Part 401, Subpart C) [Part 401 was redesignated as 49 CFR Part 801, at 40 FR 30235, July 17, 1975], the requester shall be so notified;

(2) Conduct a security review which shall include consultation with the

office which produced the material and with source authorities when the classification, or exemption of material from automatic declassification, was based upon determinations by an original classifying authority; and

(3) Assure that the requester is notified of the determination within 30 days or given an explanation as to why further time is necessary, and provide a copy of the notification to the Director of Investigations and Security.

(d) Whenever a request is insufficient in the description of the record sought, the requester shall be asked to limit his request to records that are reasonably obtainable. If, in spite of these steps, the requester does not describe the records with sufficient particularity, or the record requested cannot be obtained with a reasonable amount of effort, the requester shall be notified of the reasons why the request is denied and of his right to appeal the determination. Denial of a request to review based on the provisions of this paragraph shall be taken only under the most extreme circumstances.

(e) If the determination reached is that continued classification is required, the notification to the requester shall include, whenever possible, a brief statement as to why the requested material cannot be declassified. The notification shall also advise the requester of his right to appeal the determination. A requester who wishes to appeal a classification review decision, or who has not been notified of a decision after 60 days, may submit his appeal to the Chairman, Security Review Committee, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

(f) If the determination reached is that continued classification is not required, the information shall be declassified and the material remarked. The office acting on the request shall then refer the request to the office originating the material or higher authority to determine if it is otherwise available for public release under the Freedom of Information Act (5 U.S.C. 552) and Part 7 of the regulations of the Office of the Secretary (Part 7 of this subtitle, "Public Availability of Information").

(1) If the material is available under the Freedom of Information Act, the requester shall be advised that the material has been declassified and is available. If the request involves the furnishing of copies and a fee is to be collected, the requester shall be so advised pursuant to Part 7, Subpart H of the regulations of the Office of the Secretary (Part 7, Subpart H, of this subtitle), or in the case of National Transportation Safety Board material, pursuant to the regulations of the National Transportation Safety Board (14 CFR Part 401, Subpart C) [Part 401 was redesignated as 49 CFR Part 801, at 40 FR 30235, July 17, 1975].

(2) If the material is not available under the Freedom of Information Act, the requester shall be advised that the material has been declassified but that the record is unavailable pursuant to the Freedom of Information Act, and that the provisions concerning procedures for reconsidering decisions not to disclose records, contained in Subpart G of Part 7 of the regulations of the Office of the Secretary (Part 7, Subpart G, of this subtitle), or in the case of National Transportation Safety Board material, in 14 CFR Part 401, Subpart E [Part 401 was redesignated as 49 CFR Part 801, at 40 FR 30235, July 17, 1975], apply.

(g) Upon receipt of an appeal from a classification review determination based upon continued classification, the Departmental Security Review Committee shall immediately acknowledge receipt and act on the matter within 30 days. With respect to information originally classified by or under the primary cognizance of the Department, the Committee, acting for the Secretary, has authority to overrule previous determinations in whole or in part when, in its judgment, continued protection in the interest of national security is no longer required. When the classification of the material produced in the Department is based upon a classification determination made by another department or agency, the Security Review Committee shall immediately consult with its counterpart committee for that department.

(1) If it is determined that the material produced in the Department re-

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quires continued classification, the requester will be so notified and advised of his right to appeal the decision to the Interagency Classification Review Committee.

(2) If it is determined that the material no longer requires classification, it shall be declassified and remarked. The committee shall refer the request to the general counsel, or to the head of the operating administration concerned, or to the Chairman, National Transportation Safety Board, as the case may be, to determine if the material is otherwise available for public release under the Freedom of Information Act (5 U.S.C. 552) and the relevant regulations, and the provisions set forth in paragraphs (f)(1) and (2) of this section shall be followed. A copy of the response to the requester shall be provided to the committee.

(h) Requests for a classification review of material more than 30 years old shall be referred directly to the Archivist of the United States and the requester shall be notified of the referral. In this event, the provisions of § 8.19 apply.

§ 8.19 Declassification of classified material after 30 years.

(a) Classified material produced in the Department after June 1, 1972, which remains in a protected status, will become automatically declassified at the end of 30 full calendar years after the date of its original classification. If it appears, however, that continued protection is essential to the national security or that disclosure would place a person in immediate jeopardy, the matter shall be referred to the Secretary, through the Director of Investigations and Security. A determination that continued classification is warranted may be made only by the Secretary.

(b) Classified material produced before June 1, 1972, and which is more than 30 years old will be reviewed systematically for declassification by the Archivist of the United States by the end of the 30th full calendar year following the year in which it was originated. In his review, the Archivist will separate and keep protected only such material produced by the Department as is specifically identified by the Secretary as requiring protection. The Director of Investigations and Security is designated as the liaison officer for the Department with the Archivist for this purpose. Each administration shall advise the Director of Investigations and Security of classified material under its cognizance which is or becomes 30 years old. This notification shall also include recommendations for protection of the material considered to warrant continued classification in order that a determination by the Secretary may be obtained.

§ 8.21 Burden of proof.

For the purpose of determinations to be made under §§ 8.13, 8.15, and 8.17, the burden of proof is on the originating element to show that continued classification is warranted.

§ 8.23 Classified material transferred to the Department of Transportation.

(a) Classified material officially transferred to the Department pursuant to statute or Executive order in conjunction with a transfer of function, and not merely for storage purposes, shall be considered to have been originated by the Department for the purpose of downgrading and declassification.

(b) Classified material in the custody of the Department originated by a department or agency which has ceased to exist and whose functions and records were not officially transferred to another department shall be downgraded and declassified by the Department in accordance with the provisions of this part. If it appears that another department or agency may have an interest in the subject matter of the material from a classification standpoint, that department shall be advised of the nature of the material and the intention to downgrade or declassify. The notified department shall be allowed 30 days in which to express an objection, if it so desires, before action is taken. A difference of opinion which cannot be resolved shall be referred to the Departmental Security Review Committee which will consult with its counterpart committee for the respective department.

§ 8.25 Public availability of declassified information.

(a) It is a fundamental policy of the Department to make information available to the public to the maximum extent permitted by law. Information which is declassified for any reason loses its status as material protected in the interest of national security. Accordingly, declassified information shall be handled in every respect on the same basis as all other unclassified information. Declassified information is subject to the Departmental public information policies and procedures, with particular reference to regulations of the Office of the Secretary on public availability of information (Part 7 of this subtitle) and the Freedom of Information Act (5 U.S.C. 552).

(b) In furtherance of this policy, all classified material produced after June 1, 1972, which is of sufficient historical or other value to warrant preservation as permanent records in accordance with appropriate records administrative standards, and which becomes declassified, shall be systematically reviewed prior to the end of each calendar year for the purpose of making the material publicly available. To the maximum extent possible without destroying the integrity of the Department's files, all such material shall be segregated or set aside for public release upon request.

§ 8.27 Access to historical researchers, former Presidential appointees and contractors.

(a) *Historical researchers.* (1) Persons outside the executive branch who are engaged in historical research projects may have access to classified information provided that—

(i) Access to the information will be clearly consistent with the interests of national security; and

(ii) The person to be granted access is trustworthy.

(2) The provisions of this paragraph apply only to persons who are conducting historical research as private individuals or under private sponsorship and do not apply to research conducted under Government contract or sponsorship. The provisions are applicable only to situations where the classified information concerned, or any part of it, was originated by the Department or Department contractors, or where the information, if originated elsewhere, is in the sole custody of the Department. If any person requests access to material originated in another agency or to information under the exclusive jurisdiction of the National Archives and Records Service, General Services Administration, he will be referred to the other agency or to the National Archives and Records Service.

(3) When a request for access to classified information for historical research is received, it will be referred to the appropriate local security office. The security office shall obtain from the applicant completed Standard Form 86 in triplicate, investigation data for sensitive position, and Standard Form 87, fingerprint chart; a statement in detail to justify access, including identification of the kind of information desired and the organization or organizations, if any, sponsoring the research; and a written statement (signed, dated, and witnessed) with respect to the following:

(i) That he will abide by regulations issued by the Department—

(*a*) To safeguard classified information; and

(*b*) To protect information which has been determined to be proprietary or privileged and is therefore not eligible for public dissemination.

(ii) That he understands that any classified information which he receives affects the security of the United States.

(iii) That he acknowledges an obligation to safeguard classified information or privileged information of which he gains possession or knowledge as a result of his access to files of the Department.

(iv) That he agrees not to reveal to any person or agency any classified information or privileged information obtained as a result of his access except as specifically authorized in writing by the Department and further agrees that he shall not use the information for purposes other than those set forth in his application.

(v) That he agrees to authorize a review of his notes and manuscript for the sole purpose of determining that

no classified information or material is contained therein.

(vi) That he understands that failure to abide by conditions of this statement will constitute sufficient cause for canceling his access to classified information and for denying him any future access, and may subject him to criminal provisions of Federal law as referred to in this statement.

(vii) That he is aware and fully understands that the provisions of Title 18, United States Code, Crimes and Criminal Procedures, and of the Internal Security Act of 1950, as amended, Title 50, United States Code, prescribe, under certain circumstances, criminal penalties for the unauthorized disclosure of information respecting the national security and for loss, destruction, or compromise of such information.

(viii) That this statement is made to the U.S. Government to enable it to exercise its responsibilities for the protection of information affecting the national security. That he understands that any material false statement which he makes knowingly and willfully will subject him to the penalties of Title 18, United States Code, section 1001.

(4) The security office shall process the forms in the same manner as specified for a preappointment national agency check for a critical-sensitive position. Upon receipt of the completed national agency check, the security office, if warranted, may determine that access by the applicant to the information will be clearly consistent with the interests of national security and the person to be granted access is trustworthy. If deemed necessary, before making its determination, the office may conduct or request further investigation. Before access is denied in any case, the matter will be referred through channels to the Director of Investigations and Security for review and submission to the Secretary for final denial.

(5) If access to Top Secret, intelligence, or communications security information is involved a full field investigation is required. However, this investigation shall not be requested until the matter has been referred through channels to the Director of Investigations and Security for determination as to adequacy of the justification and the consent of other agencies as required.

(6) When it is indicated that an applicant's research may extend to material originating in the records of another agency, approval must be obtained from the other agency prior to the grant of access.

(7) Approvals for access shall be valid for the duration of the current research project but no longer than 2 years from the date of issuance, unless renewed. If a subsequent request for similar access is made by the individual within 1 year from the date of completion of the current project, access may again be granted without obtaining a new National Agency Check. If more than 1 year has elapsed, a new National Agency Check must be obtained. The local security office shall promptly advise its security staff, headquarters, of all approvals of access granted under these provisions.

(8) An applicant may be given access only to that classified information which is directly pertinent to his approved project. He may review files or records containing classified information only in offices under the control of the Department. Procedures must be established to identify classified material to which he is given access. He must be briefed on local procedures established to prevent unauthorized access to the classified material while in his custody, for the return of the material for secure storage at the end of the daily working period, and for the control of his notes until they have been reviewed. In addition to the security review of the applicant's manuscript, the manuscript must be reviewed by appropriate offices to assure that it is technically accurate insofar as material obtained from the Department is concerned and is consistent with the Department's public release policies.

(b) *Former Presidential appointees.* Persons who previously occupied policymaking positions to which they were appointed by the President may be granted access to classified information or material which they originated, reviewed, signed, or received, while in public office, provided that—

(1) It is determined that such access is clearly consistent with the interests of national security; and

(2) The person agrees to safeguard the information, to authorize a review of his notes to assure that classified information is not contained therein, and that the classified information will not be further disseminated or published.

(c) *Contractors.* Classified information may be disclosed to DOT contractors, subcontractors, bidders, and grantees, and to contractors of other Government agencies, provided access to the information is necessary to the performance of the contract and required security clearances have been issued.

§ 8.29 Industrial security.

(a) *Background.* Executive Order 10865, as amended, Safeguarding Classified Information Within Industry (25 FR 1583, February 24, 1960) states,

> The Secretary of State, the Secretary of Defense, the Secretary of Transportation, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeronautics and Space Administration, respectively, shall, by regulation, prescribe such specific requirements, restrictions, and other safeguards as they consider necessary to protect—
>
> (1) Releases of classified information to or within U.S. industry that relate to bidding on, or the negotiation, award, performance, or termination of, contracts with their respective agencies; and
>
> (2) Other releases of classified information to or within industry that such agencies have responsibility for safeguarding. So far as possible, regulations prescribed by them under this order shall be uniform and provide for full cooperation among the agencies concerned.

Executive Order 10865 also prescribes criteria for the issuance of security clearances to industry personnel and requirements for the adjudication of controverted cases.

(b) *Implementing regulations.* Under an agreement between the Department of Defense and the Department of Transportation, regulations prescribed by the Secretary of Defense to fulfill the provisions of Executive Order 10865, as amended, have been extended to protect releases of classified information for which the Secretary of Transportation is responsible. Specifically, these regulations are:

(1) DOD 5220.22-R, Industrial Security Regulation;

(2) DOD 5220.22-M, Industrial Security Manual for Safeguarding Classified Information, together with supplements; and

(3) DOD 5220.6, Industrial Personnel Security Clearance Program.

These regulations are effective within the Department, which functions as a User Agency as prescribed in the regulations. Appropriate security staffs, project personnel, and contracting officers assure that actions required by the regulations are taken.

(c) *Liaison and coordination with Department of Defense.* The Director of Investigations and Security shall maintain liaison and coordination with the Department of Defense on behalf of the Department on overall industrial security matters. The Director shall develop such material as may be necessary to permit the Secretary to reach those determinations specifically reserved to him by Executive Order 10865, as amended, and the agreement between the Department of Defense and the Department of Transportation.

PART 9—TESTIMONY OF EMPLOYEES OF THE DEPARTMENT AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.

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9.17 Acceptance of service on behalf of Secretary.

AUTHORITY: Sec. 9, 80 Stat. 944, 49 U.S.C. 1657, unless otherwise noted.

SOURCE: Amdt. 9-1, 34 FR 11972, July 16, 1969, unless otherwise noted.

§ 9.1 Purpose.

(a) This part prescribes the policies and procedures of the Department with respect to testimony of its employees as witnesses in legal proceedings, the acceptance of service of legal process and pleadings in legal proceedings involving the Department, and the production of records of the Department pursuant to subpoena.

(b) The General Counsel or the appropriate counsel of the operating administration concerned may grant permission to deviate from a policy or procedure prescribed by this part. He may grant that permission only when the deviation will not interfere with matters of operational or military necessity, and when—

(1) It is necessary to prevent a miscarriage of justice;

(2) The Department has an interest in the decision that may be rendered in the legal proceeding; or

(3) The deviation is in the best interests of transportation activities fostered by the Department or the United States.

(c) This part does not apply to any legal proceeding in which an employee is to testify, while in leave status, as to facts or events that are in no way related to the duties he performs or to the functions of the Department.

§ 9.3 Definitions.

For purposes of this part—

"Appropriate counsel of the operating administration concerned" includes the General Counsel or Chief Counsel of the operating administration concerned and any person to whom he has delegated his authority under this part.

"Department" means the Department of Transportation, including the Office of the Secretary and the following operating administrations:

(a) The U.S. Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The Urban Mass Transportation Administration.

(f) The St. Lawrence Seaway Development Corporation.

"Legal proceeding" includes any proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

"Legal proceeding between private litigants" means any legal proceeding in which neither the United States nor the Department of Transportation is directly or indirectly involved.

"Employee of the Department" means an officer or employee of the Department and an active duty officer or enlisted member of the Coast Guard.

(g) The National Highway Traffic Safety Administration.

[Amdt. 9-1, 34 FR 11972, July 16, 1969, as amended by Amdt. 9-2, 35 FR 5331, Mar. 31, 1970; Amdt. 9-3, 36 FR 431, Jan. 13, 1971; Amdt. 9-4, 36 FR 4291, Mar. 4, 1971]

§ 9.5 Testimony by employees in proceedings involving the United States.

(a) Except as provided in paragraph (c) of this section, an employee of the Department may not testify as an expert or opinion witness for any party other than the United States in any legal proceeding in which the United States is involved, but may testify as to facts.

(b) Whenever, in any legal proceeding involving the United States, the attorney in charge of presenting the case for the United States requests it, the General Counsel or appropriate counsel of the operating administration concerned shall arrange for an employee of the Department to testify as a witness for the United States.

(c) An employee of the Department may appear and testify as an expert or opinion witness on behalf of an active duty officer or enlisted member of the Coast Guard in any legal proceeding conducted by the Coast Guard.

[Amdt. 9-1, 34 FR 11972, July 16, 1969, as amended by Amdt. 9-4, 36 FR 4290, Mar. 4, 1971]

§ 9.7 Legal proceedings between private litigants; general rule.

Subject to §§ 9.9 and 9.13, an employee of the Department may not testify as an expert or opinion witness, as to any matter related to his duties or the functions of the Department, in any

legal proceeding between private litigants, for the following reasons:

(a) To conserve the time of employees for conducting official business.

(b) To minimize the possibility of involving the Department in controversial issues that are not related to its mission.

(c) To prevent the possibility that the public will misconstrue variances between the personal opinions of employees and departmental policy.

(d) To avoid spending the time and money of the United States for private purposes.

§ 9.9 Legal proceedings between private litigants; subpoenas.

(a) Whenever, in a legal proceeding between private litigants, an employee of the Department is served with a subpoena or is requested to testify, he shall immediately report the service or request to the General Counsel or appropriate counsel of the operating administration concerned, who shall determine whether the employee is required to comply and shall, in appropriate cases, arrange for legal representation for the employee.

(b) Whenever an employee's compliance with a subpoena would adversely affect the performance of official duties or require producing records that are not available for public disclosure, the General Counsel or appropriate counsel of the operating administration concerned shall attempt to have the subpoena withdrawn or modified.

§ 9.11 Legal proceedings between private litigants; factual testimony.

(a) An employee of the Department who has been subpoenaed in a legal proceeding between private litigants, and who is required to comply with the subpoena, shall testify only as to facts within his personal knowledge, even if the facts are contained in a report that he is not allowed to produce. However, he must obtain the permission of the General Counsel or appropriate counsel of the operating administration concerned before disclosing any information that is restricted by statute or regulation.

(b) An employee who gives factual testimony shall avoid any statements of opinion.

§ 9.13 Legal proceedings between private litigants; expert or opinion testimony.

If, while testifying in a legal proceeding between private litigants, an employee of the Department is asked for expert or opinion testimony, he shall decline to answer on the grounds that he is forbidden to do so by this part. If he is then ordered by the body conducting the proceeding to testify, he shall do so.

§ 9.15 Legal proceedings between private litigants; disclosure of records.

(a) Copies of any records available for public inspection under Part 7 of this subtitle, "Public Availability of Information", are available, as provided in that part, to litigants upon request.

(b) If an employee of the Department receives a subpoena or request to produce records in court or before any other body, he shall refer it to the General Counsel or appropriate counsel of the operating administration concerned. If the subpoena or request calls for producing records the release of which is authorized, counsel shall advise that the subpoena or request be honored.

(c) An employee of the Department may not produce a record except upon a clearance from the General Counsel or appropriate counsel of the operating administration concerned. If copies of records that are available for public inspection under Part 7 of this subtitle are subpoenaed, the person subpoenaing them is liable for the fee established under that part for the production of those records, including any search for them.

(d) If an employee is served with a subpoena calling for records that the General Counsel or appropriate counsel of the operating administration concerned determines should not be released, the General Counsel or appropriate counsel of the operating administration concerned shall attempt to have the subpoena withdrawn or modified. If this cannot be done, the employee shall appear at the time and

place specified in the subpoena, accompanied by an attorney from the Office of the General Counsel, appropriate counsel of the operating administration concerned, or the Department of Justice, as appropriate, and explain to the authority conducting the proceeding that a statute or regulation prohibits him from producing the records.

(e) If an employee who follows the procedure in paragraph (d) of this section is ordered to show cause why he should not be cited for contempt of court, the General Counsel or appropriate counsel of the operating administration concerned shall request the Department of Justice to represent the employee.

§ 9.17 Acceptance of service on behalf of Secretary.

Process or pleadings in any legal proceeding may be served, at the option of the server, on the General Counsel or appropriate counsel of the operating administration concerned, with the same effect as if served upon the Secretary or the head of the operating administration concerned, as the case may be. The official accepting the service under this section shall acknowledge the service and take further action as appropriate.

PART 10—MAINTENANCE OF AND ACCESS TO RECORDS PERTAINING TO INDIVIDUALS

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APPENDIX J—RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION.

AUTHORITY: Pub. L. 93-579, sec. 9, Department of Transportation Act, Pub. L. 89-670; 49 U.S.C. 1657.

SOURCE: 45 FR 8993, Feb. 11, 1980, unless otherwise noted.

Subpart A—Applicability and Policy

§ 10.1 Applicability.

(a) This part implements section 552a of Title 5, United States Code, as well as other provisions of the Privacy Act of 1974, and prescribes rules governing the availability of those records of the Department of Transportation which relate to citizens of the United States and aliens lawfully admitted for permanent residence.

(b) Appendices B through J to this part:

(1) Describe the places and times at which records are available for inspection and copying;

(2) Indicate the systems of records located at each facility;

(3) Identify the officials having authority to deny requests for disclosure of records under this part;

(4) Describe the procedures to be followed in requesting correction of a record in accordance with § 10.41 of this part; and

(5) List additional personal identification requirements in accordance with § 10.37 of this part.

(c) The Assistant Secretary for Administration may amend Appendix B to this part to reflect any changes in the items covered by that appendix, relating to the Office of the Secretary of Transportation. The Administrator concerned may amend the appendix applicable to that administration to reflect any changes in the terms covered by that appendix.

(d) Appendix A to this part identifies systems of records which are exempt from some of the requirements of this part, in accordance with Subpart G and 5 U.S.C. 552a (j) and (k). Appendix A may be amended by the General Counsel upon the request of the Assistant Secretary for Administration in the case of a system of records maintained by the Office of the Secretary or the Administrator concerned in the case of a system of records maintained by an operating administration.

§ 10.3 Policy.

It is the policy of the Department of Transportation to comply with the letter and the spirit of the Privacy Act (the Act). Therefore, personal data contained in each system of records is afforded adequate protection against unauthorized access, is as accurate as is feasible, and is limited to that necessary to accomplish the stated use or uses of the system. Further, no system of records is exempted from the requirements of the Act unless it is determined that to do so is in the best interest of the government with due concern for individual rights.

§ 10.5 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

"Administrator" means the head of an operating administration and includes the Commandant of the Coast Guard.

"Department" means the Department of Transportation, including the Office of the Secretary and the following operating administrations:

(a) The United States Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The National Highway Traffic Safety Administration.

(f) The Urban Mass Transportation Administration.

(g) The St. Lawrence Seaway Development Corporation.

(h) The Research and Special Programs Administration.

"General Counsel" means the General Counsel of the Department.

"Includes" means "includes but is not limited to;"

"Individual" means a citizen of the United States or an alien lawfully admitted;

"Maintain" includes maintain, collect, use, or disseminate;

"May" is used in a permissive sense to state authority or permission to do the act prescribed;

"Record" means any item, collection, or grouping of information about an individual that is maintained by the Department including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains

the name of, or an identifying number, symbol, or other identifying particular assigned to, the individual, such as a finger or voice print or a photograph;

"Secretary" means the Secretary of Transportation or any person to whom has been delegated authority in the matter concerned;

"System of records" means a group of any records under the control of the Department from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

"Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13, United States Code; and

"Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

Subpart B—General

§ 10.11 Administration of part.

Except as provided in subpart F of this part, authority to administer this part in connection with the records of the Office of the Secretary is delegated to the Assistant Secretary for Administration. Authority to administer this part in connection with records in each operating administration is delegated to the Administrator concerned. An Administrator may redelegate to officers of that administration the authority to administer this part in connection with defined systems of records. An Administrator, however, may redelegate his or her duties under Subparts F and G of this part only to his or her deputy and to not more than one other officer who reports directly to the Administrator and who is located at the headquarters of that administration or at the same location as the majority of that administration's systems of records.

§ 10.13 Privacy Act Officer.

(a) To assist in the oversight of the implementation and continuing administration and in evaluating the effectiveness of compliance with the Act, the Assistant Secretary for Administration appoints a principal coordinating official with the title Privacy Act Officer, and one Privacy Act Coordinator from his staff.

(b) Inquiries concerning Privacy Act matters, or requests for assistance, may be addressed to the Privacy Act Officer (M-30), Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

(c) Administrators may designate Privacy Act Officers or Coordinators to act as central coordinators within their administrations to assist them in administering the Act.

§ 10.15 Protection of records.

(a) No person may, without permission, remove any record made available for inspection or copying under this part from the place where it is made available. In addition, no person may steal, alter, mutilate, obliterate, or destroy, in whole or in part, such a record.

(b) Section 641 of Title 18 of the United States Code provides, in pertinent part, as follows:

Whoever * * * steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record * * * or thing of value of the United States or of any department or agency thereof * * * shall be fined not more than $10,000 or imprisoned not more than 10 years or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year or both * * *.

(c) Section 2071 of Title 18 of the United States Code provides, in pertinent part, as follows:

Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited * * * in any public office, or with any * * * public officer of the United States, shall be fined not more than $2,000 or imprisoned not more than 3 years, or both.

Subpart C—Maintenance of Records

§ 10.21 General.

Except to the extent that a system of records is exempt in accordance with Subpart G of this part, the Department, with respect to each system of records:

(a) Maintains in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the Department required to be accomplished by statute or by executive order of the President;

(b) Collects information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, or privileges under Federal programs;

(c) Informs each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual of:

(1) The authority (whether granted by statute, or by excecutive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses, as published pursuant to paragraph (d)(4) of this section, which may be made of the information; and

(4) The effects, if any, on the individual of not providing all or any part of the requested information;

(d) Publishes in the FEDERAL REGISTER at least annually a notice of the existence and character of the system of records, including;

(1) The name and location of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(5) The policies and practices regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the official responsible for the system of records;

(7) The procedures whereby an individual can be notified upon request if the system of records contains a record pertaining to that individual;

(8) The procedures whereby an individual can be notified upon request how to gain access to any record pertaining to that individual contained in the system of records, and how to contest its content; and

(9) The categories of sources of records in the system;

(e) Maintains all records which are used in making any determination about any individual with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(f) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to § 10.35(a)(2), makes reasonable efforts to assure that such records are accurate, complete, timely, and relevant for the Department's purposes;

(g) Maintains no record describing how any individual exercises rights guaranteed by the First Amendment unless—

(1) Expressly authorized by the General Counsel; and

(2) Expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(h) Makes reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

§ 10.23 Accounting of disclosures.

Each operating administration and the Office of the Secretary, with respect to each system of records under its control:

(a) Except for disclosures made under § 10.35(a) (1) or (2) of this part, keep an accurate accounting of:

(1) The date, nature, and purpose of each disclosure of a record to any person or to another agency made under § 10.33; and

(2) the name and address of the person or agency to whom the disclosure is made;

(b) Retains the accounting made under paragraph (a) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(c) Except for disclosures made under § 10.33(a)(7) of this part, makes the accounting made under paragraph (a)(1) of this section available to the individual named in the record at his request; and

(d) Informs any person or other agency about any correction or notation of dispute made by the agency in accordance with § 10.45 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

§ 10.25 Mailing lists.

An individual's name and address is not sold or rented unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

§ 10.27 Government contractors.

When the Department provides by a contract for the operation by or on behalf of the Department of a system of records to accomplish a function of the Department, the requirements of this part are applied to such system. For purposes of Subpart I, CRIMINAL PENALTIES, any such contractor and any employee of the contractor are considered, in accordance with section 3(m) of the Privacy Act, to be employees of the Department.

§ 10.29 Social Security numbers.

(a) No individual is denied any right, benefit, or privilege provided by law because of such individual's refusal to disclose his Social Security account number.

(b) The provisions of paragraph (a) of this section do not apply to:

(1) Any disclosure which is required by Federal statute; or

(2) The disclosure of a Social Security number when such disclosure was required under statute or regulation adopted prior to January 1, 1975, to verify the identity of an individual.

(c) When an individual is requested to disclose his or her Social Security account number, that individual is informed whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, what uses are made of it, and what detriments, including delay in the location of records, are incurred if the number is not provided.

Subpart D—Availability of Records

§ 10.31 Requests for records.

(a) Ordinarily, each person desiring to determine whether a record pertaining to him or her is contained in a system of records covered by this part or desiring access to a record covered by this part, or to obtain a copy of such a record, shall make a request in writing as provided in the pertinent appendix to this part. In exceptional cases oral requests are accepted.

(b) Each request shall specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located. If assistance is required to determine the system of records identification number assigned in the systems notices, such assistance may be obtained from the appropriate Privacy Act Officer or his Assistant. Refer to § 10.13 for procedures for requesting assistance.

§ 10.33 Acknowledgment and access.

(a) Requests by an individual to determine whether he or she is the subject of a record in a system of records, or requesting access to a record in a system of records, should be acknowledged within 10 working days, where the request is by mail. For requests in person, an immediate response is given, either granting access or informing such individual when notification or access may be expected.

(b) If the response granting access or copies of the record is made within 10

working days, separate acknowledgment is not required.

(c) Although requests for access to a record are normally in writing, *e.g.*, by filing a written form or letter, it is the option of the individual to mail or present the request form in person.

§ 10.35 Conditions of disclosure.

(a) No record which is contained within a system of records within the Department is disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(1) To those officers and employees of the Department who have a need for the record in the performance of their duties;

(2) Required under Part 7 of this title which implements the freedom of Information Act;

(3) For a routine use as defined in § 10.5 and described pursuant to § 10.21(d)(4);

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, United States Code;

(5) To a recipient who has provided the Department with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transférred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of the Congress, or to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of the Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(b) Any individual requesting access to his or her record or to any information pertaining to that individual which is contained within a system of records within the Department has access to that record or information unless the system of records within which the record or information is contained is exempted from disclosure in accordance with Subpart G, provided, however, that nothing in this part is deemed to require that an individual be given access to any information compiled in reasonable anticipation of a civil action or proceeding. No exemption contained in Subpart G of Part 7 of the Regulations of the Office of the Secretary is relied upon to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this part. Any individual who is given access to a record or information pertaining to him is permitted to have a person of his or her own choosing accompany him and to have a copy made of all or any portion of the record or information in a form comprehensible to the individual. When deemed appropriate, the individual may be required to furnish a written statement authorizing discussion of his record in the accompanying person's presence.

(c) Medical Records—Where requests are for access to medical records, including psychological records, the decision to release directly to the

individual, or to withhold direct release, shall be made by a medical practitioner. Were the medical practitioner has ruled that direct release will do harm to the individual who is requesting access, normal release through the individual's chosen medical practitioner will be recommended. Final review and decision on appeals of disapprovals of direct release will rest with the General Counsel.

(d) Any person requesting access to records or to any information pertaining to other individuals is not granted such access unless that person can show that he or she has obtained permission for such access from the individual to whom the record pertains, unless the request comes within one of the exceptions of § 10.35(a).

§ 10.37 Identification of individual making request.

No record or information contained in a system of records is disclosed to an individual nor is any correction of a record in accordance with Subpart E made at the request of an individual unless that individual demonstrates that he or she is who he or she claims to be. Normally, identity can be proven for individuals who appear in person by the presentation of an identifying document issued by a recognized organization (*e.g.,* a driver's license or a credit card) and which contains a means of verification such as a photograph or a signature. For requests by mail, the unique identifier used in the system should be included if known. Responses to mail requests are normally sent only to the name and address listed in the system of records. In the case of particularly sensitive records, additional identification requirements may be imposed. In such cases, these additional requirements are listed in the public notice for the system and in the appropriate appendix to this part.

§ 10.39 Location of records.

Each record made available under this subpart is available for inspection and copying during regular working hours at the place where it is located or, upon reasonable notice, at the document inspection facilities of the Office of the Secretary or each administration as set forth in the appendix applicable to that office or administration. Original records may be copied but may not be released from custody. Upon payment of the appropriate fee, copies are mailed to the requester.

Subpart E—Correction of Records

§ 10.41 Requests for correction of records.

Any person who desires to have a record pertaining to that person corrected shall submit a written request detailing the correction and the reasons the record should be so corrected. Requests for correction of records shall be submitted in accordance with the procedures of the organization set forth in Appendices B through J to this part for the appropriate operating element of the Department.

§ 10.43 Time limits.

Within ten days (excluding Saturday, Sunday, and legal holidays) of the receipt in accordance with § 10.41 of a request by an individual to amend a record pertaining to him, the receipt of the request is acknowledged in writing. If a determination is made to correct the record as requested, the correction is promptly made. If a determination is made not to correct a record the individual is informed promptly of the right to appeal in accordance with Subpart F. If an appeal of a refusal to correct a record is in accordance with Subpart F, a determination whether to correct the record is made within thirty days (excluding Saturday, Sunday and legal holidays) of the receipt of the appeal unless, for good cause shown the Administrator concerned, or in the case of the Office of the Secretary, the General Counsel, extends such period. Where an extension is taken, the party taking the appeal is promptly notified of such fact.

§ 10.45 Statement of disagreement.

If a determination is made not to amend a record, the requester is informed of the right to file a concise statement setting forth the reasons for disagreement with the refusal to amend. In any disclosure containing information about which an individual

has filed such a statement of disagreement, the portions of the record which are disputed are noted clearly and copies of the statement of disagreement provided. If the Administrator concerned or his or her delegee, or in the case of the Office of the Secretary, the General Counsel or his or her delegee, deems it appropriate, copies of a concise statement of the reasons for not making the amendments requested may be provided along with the statement of disagreement.

Subpart F—Procedures for Reconsidering Decisions Not To Grant Access to or Amend Records

§ 10.51 General.

(a) Each officer or employee of the Department who, upon a request by a member of the public for a record under this part, makes a determination that access is not to be granted or who determines not to amend a record in a requested manner, gives a written statement of the reasons for that determination to the person making the request and indicates the name and title or position of each person responsible for the denial of such request and the procedure for appeal within the Department.

(b) Any person:

(1) Who has been given a determination pursuant to paragraph (a) of this section, that access will not be granted; or

(2) Who has been informed that an amendment to a requested record will not be made;

may apply to the Administrator concerned, or in the case of the Office of the Secretary, to the General Counsel for review of that decision. A determination that access will not be granted or a record amended is not administratively final for the purposes of judicial review unless it was made by the Administrator concerned or his or her delegee, or the General Counsel or his or her delegee, as the case may be. Upon a determination that an appeal will be denied, the requester is informed in writing of the reasons for the determination, and the names and titles or positions of each person responsible for the determination, and that the determination may be appealed to the District Court of the United States in the district in which the complainant resides, or has his or her principal place of business, or in which the records are located, or in the District of Columbia.

(c) Each application for review must be made in writing and must include all information and arguments relied upon by the person making the request. It is recommended that such request be made within 180 days of the date of the initial denial; however, exceptions to this time period are considered in the event that a longer time is required for good reasons.

(d) Upon a determination that a request for the correction of a record will be denied, the requester is informed that he may file a concise statement in accordance with § 10.45.

(e) Each application for review must indicate that it is an appeal from a denial of a request made under the Privacy Act. The envelope in which the application is sent should be marked prominently with the words "Privacy Act." If these requirements are not met, the time limits described in § 10.43 do not begin to run until the application has been identified by an employee of the Department as an application under the Privacy Act and has been received by the appropriate office.

(f) The Administrator concerned, or the General Counsel, as the case may be, may require the person making the request to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. The decision of the Administrator concerned, or the General Counsel, as the case may be, as to the availability of the record or whether to amend the record is administratively final.

(g) The decision by the Administrator concerned, or the General Counsel, as the case may be, not to disclose a record under this part is considered a determination for the purposes of section 552a(g) of Title 5, United States Code, "Civil Remedies."

(h) Any final decision by an Administrator or his or her delegee, identified in Appendices B through J of this part, not to grant access to or amend a

record under this part, is subject to concurrence by the General Counsel or his or her delegee.

Subpart G—Exemptions

§ 10.61 General exemptions.

(a) The Assistant Secretary for Administration, with regard to the Investigations Divisions; the Federal Aviation Administrator, with regard to the FAA's Investigative Record System (DOT/FAA 815) and also with regard to the police functions of the National Capital Airport Police; the Commandant of U.S. Coast Guard, with regard to the Intelligence and Security Division; and the Federal Railroad Administrator, with regard to the Alaska Railroad Special Agents, may exempt from any part of the Act and this part except subsections (b), (c)(1) and (2), (e)(4)(A), through (F), (e)(6), (7), (9), (10), and (11), and (i) of the Act, and implementing §§ 10.35, 10.23(a) and (b), 10.21(d)(1) through (6), 10.81, 10.83, and 10.85, any systems of records, or portions thereof, which they maintain which consist wholly of;

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(b) The requirements (including general notice) of sections 553(b)(1), (2) and (3), and (c) and (e) of Title 5, United States Code, will be met by publication in Appendix A to this part, which must, at a minimum, specify:

(1) The name of the system; and

(2) The specific provisions of the Act from which the system is to be exempted and the reasons therefor.

(c) Any decision to exempt a system of records under this section is subject to concurrence by the General Counsel.

(d) Any person may petition the Secretary in accordance with the provisions of Part 5 of this Title, to institute a rulemaking proceeding for the amendment or repeal of any exemptions established under this section.

§ 10.63 Specific exemptions.

The Secretary or his or her delegee, in the case of the Office of the Secretary, or the Administrator or his or her delegee, in the case of an operating administration, may exempt any system of records which is maintained by the Office of the Secretary or the administration, as the case may be, from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Act and implementing §§ 10.23(c); 10.35(b); 10.41; 10.43; 10.45; 10.21(a) and 10.21(d)(6), (7) and (8) of this part, under the following conditions;

(a) The system of records must consist of:

(1) Records subject to the provisions of section 552(b)(1) of Title 5, United States Code;

(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of paragraph (a)(2) of § 10.61: Provided, however, That if any individual is denied any right, privilege, or benefit to which that individual would otherwise be entitled by Federal law, or for which that individual would otherwise be eligible, as a result of the maintenance of such material, such material is provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, the effective date of the Privacy Act of 1974, under an implied promise that the identity of the source would be held in confidence;

(3) Records maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18, United States Code;

(4) Records required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, the effective date of the Privacy Act of 1974, under an implied promise that the identity of the source would be held in confidence;

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

(b) The requirements (including general notice) of sections 553 (b) (1), (2) and (3), and (c) and (e) of Title 5, United States Code, will be met by publication in Appendix A to this part, which must, at a minimum, specify:

(1) The name of the systems; and

(2) The specific provisions of the Act from which the system is to be exempted and the reasons therefor.

(c) Any decision to exempt a system of records under this section is subject to the concurrence of the General Counsel.

(d) Any person may petition the Secretary in accordance with the provisions of 49 CFR Part 5, to institute a rule making for the amendment or repeal of any exemptions established under this section.

Subpart H—Fees

§ 10.71 General.

This subpart prescribes fees for services performed for the public under this part by the Department.

§ 10.73 Payment of fees.

The fees prescribed in this subpart may be paid by check, draft, or postal money order payable to the Treasury of the United States.

§ 10.75 Fee schedule.

(a) Copies of documents by photocopy or similar method:	
Each page not larger than 11 x 17 inches:	
First page	$.25
Each page	.05
(b) Copies of documents by typewriter: Each page	2.00
(c) Certified copies of documents:	
(1) With Department of Transportation seal	3.00
(2) True copy, without seal	1.00
(d) Photographs:	
(1) Black and white print (from negative)	1.25
(2) Black and white print (from print)	3.15
(3) Color print (from negative)	3.50
(4) Color print (from print)	6.25
(e) Duplicate data tapes—each reel of tape or fraction thereof	36.00

The applicant must furnish the necessary number of blank magnetic tapes. The tapes must be compatible for use in the supplier's computer system, ½ inch wide and 2,400 feet long, and must be capable of recording data at a density of 556 or 800 characters per inch. Unless otherwise designated, the tapes will be recorded at 556 CPI density. The Department of Transportation is not responsible for damaged tape. However, if the applicant furnishes a replacement for a damaged tape, the duplication process is completed at no additional charge.

(f) Microreproduction fees are as follows:	
(1) Microfilm copies, each 100 foot roll or less	$3.75
(2) Microfiche copies, each standard size sheet (4" x 6" containing up to 65 frames)	.15
(3) Apertune card to hard copy, each copy	.50
(4) 16mm microfilm to hard copy:	
First	.25
Additional	.07
(g) Computerline printer output, each 1,000 lines or fraction thereof	1.00

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§ 10.77 Services performed without charge.

(a) No fee is charged for time spent in searching for records or reviewing or preparing correspondence related to records subject to this part.

(b) No fee is charged for documents furnished in response to:

(1) A request from an employee or former employee of the Department for copies of personnel records of the employee;

(2) A request from a Member of Congress for official use;

(3) A request from a State, territory, U.S. possession, county or municipal government, or an agency thereof;

(4) A request from a court that will serve as a substitute for the personal court appearance of an officer or employee of the Department;

(5) A request from a foreign government or an agency thereof, or an international organization.

(c) Documents are furnished without charge or at a reduced charge, if the Assistant Secretary of Administration or the Administrator concerned, as the case may be, determines that waiver or reduction of the fee is in the public interest, because furnishing the information can be considered as primarily benefiting the general public.

(d) When records are maintained in computer-readable form rather than human-readable form, one printed copy is made available which has been translated to human-readable form without a charge for translation but in accordance with § 10.75(g), regarding computer line-printed charges.

Subpart I—Criminal Penalties

§ 10.81 Improper disclosure.

Any officer or employee of the Department who by virtue of his or her employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this part and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, is guilty of a misdemeanor and fined not more than $5,000 in accordance with 5 U.S.C. 552a(i)(1).

§ 10.83 Improper maintenance of records.

Any officer or employee of the Department who willfully maintains a system of records without meeting the notice requirements of § 10.21(d) of this part is guilty of a misdemeanor and fined not more than $5,000 in accordance with 5 U.S.C. 552a(i)(2).

§ 10.85 Wrongfully obtaining records.

Any person who knowingly and willfully requests or obtains any record concerning an individual from the Department under false pretenses is guilty of a misdemeanor and fined not more than $5,000 in accordance with 5 U.S.C. 552a(i)(3).

Appendix A—Exemptions

Part I. General exemptions. Those portions of the following systems of records that consist of (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision, are exempt from all parts of 5 U.S.C. 552a except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i):

A. The Investigative Records System maintained by the Assistant Inspector General for Investigations, Office of the Inspector General, Office of the Secretary (DOT/OST 100).

B. Police Warrant Files and Central Files maintained by the Police Branches, Washington National and Dulles International Airports, Federal Aviation Administration (DOT/FAA 807).

C. Intelligence and Security Investigative Case Systems (DOT/CG 611), maintained by the Intelligence and Security Division, U.S. Coast Guard, at headquarters and district offices.

D. The Investigative Records System maintained by the Federal Aviation Administration regarding criminal investigations conducted by offices of Investigations and

Security at headquarters and FAA Regional and Center Security Divisions (DOT/FAA 815).

E. Administrative Action and Legal Enforcement System, maintained by the Chief Counsel, Federal Aviation Administration (DOT/FAA 805).

The purpose of these exemptions is to prevent the compromise or impairment of criminal investigations conducted by the Office of Investigations and Security, OST; the Airport Police Branches; and the Investigations and Security Division, USCG; and the Office of Investigation and Security, Regional and Center Security Division of FAA.

Part II. Specific exemptions. A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2):

1. Investigative Record System maintained by the Federal Aviation Administration at FAA Regional and Center Air Transportation Security Divisions; the Investigations and Security Division, Aeronautical Center; and Office of Investigations and Security, FAA Headquarters, Washington, D.C. (DOT/FAA 815).

2. FHWA Investigations Case File System, maintained by the Office of Program Review and Investigations, Federal Highway Administration (DOT/FHWA 214).

3. FHWA Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases, maintained by the Bureau of Motor Carrier Safety, Federal Highway Administration (DOT/FHWA 204).

4. Recreational Boating and Law Enforcement Cases (DOT/CG 505), maintained by the Office of Boating Safety, U.S. Coast Guard.

5. Port Safety Reporting System—Individual Violation Histories (DOT/CG 561), maintained by the Office of Marine Environment and Systems, U.S. Coast Guard.

6. Merchant Vessel Casualty Reporting System (DOT/CG 590), maintained by the Office of Merchant Marine Safety, U.S. Coast Guard.

7. U.S. Merchant Seaman's Records (DOT/CG 589), maintained by the Office of Merchant Marine Safety, U.S. Coast Guard.

8. Intelligence and Security Investigative Case Systems (DOT/CG 611), maintained by the Office of Operations, U.S. Coast Guard.

9. Port Security Case System (DOT/CG 612), maintained by the Office of Operations, U.S. Coast Guard.

10. DOT/NHTSA Investigations of Alleged Misconduct or Conflict of Interest, maintained by the Associate Administrator for Administration, National Highway Traffic Safety Administration (DOT/NHTSA 458).

11. Investigations of Violations of Marine Safety Laws (DOT/CG 587), maintained by the Office of Merchant Marine Safety, U.S. Coast Guard.

12. Civil Aviation Security System (DOT/FAA 813), maintained by the Civil Aviation Security Service, Federal Aviation Administration.

The purpose of these exemptions is to protect investigatory materials compiled for law enforcement purposes. Disclosure of such material would hamper law enforcement by prematurely disclosing the knowledge of illegal activity and the evidentiary basis for possible enforcement actions.

B. The following systems of records are exempt from subsections (c)(3) (Accounting of Certain Disclosures), and (d) (Access to Records) of 5 U.S.C. 552a:

1. Alaska Railroad Security and Freight Claims Investigatory Files maintained by the Alaska Railroad, Federal Railroad Administration (DOT/FRA 102).

2. Administrative Action and Legal Enforcement System, maintained by the Chief Counsel, Federal Aviation Administration (DOT/FAA 805).

3. Investigative Records System, maintained by the Assistant Inspector General for Investigations in the Office of the Inspector General (DOT/OST 100).

The purpose of these exemptions is to prevent the compromise or impairment of law enforcement investigations by alerting individuals that they are the subject of investigation, and to prevent the disclosure of the identity or sources of information promised confidentiality, in accordance with 5 U.S.C. 552a(k)(2).

C. The system of records known as the Alaska Railroad Examination of Operating Personnel, maintained by the Alaska Railroad, Federal Railroad Administration (DOT/FRA 100), is exempt from the provisions of subsection (d) of 5 U.S.C. 552a. The release of these records would compromise their value as impartial measurement standards for appointment and promotion within the Federal Service.

D. Those portions of the following systems of records consisting of investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or access to classified information or used to determine potential for promotion in the armed services, are exempt from sections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a to the extent that disclosure of such material

would reveal the identity of a source who provided information to the Government under an express or, prior to September 27, 1975, an implied promise of confidentiality (5 U.S.C. 552a(k) (5) and (7)):

1. Investigative Records System, maintained by the Assistant Inspector General for Investigations in the Office of the Inspector General (DOT/OST 100).

2. Intelligence and Security Investigative Case System (DOT/CG 611), maintained by the Office of Operations, U.S. Coast Guard.

3. Officer Selection and Appointment System (DOT/CG 625), maintained by the Office of Personnel, U.S. Coast Guard.

4. Official Officer Service Records (DOT/CG 626), maintained by the Office of Personnel, U.S. Coast Guard.

5. Enlisted Recruiting Selection Record System maintained by the Office of Personnel, U.S. Coast Guard.

6. Officer, Enlisted, and Recruiting Selection Test Files (DOT/CG 628), maintained by the Office of Personnel, U.S. Coast Guard.

7. Enlisted Personnel Record System, (DOT/CG 629), maintained by the Office of Personnel, U.S. Coast Guard.

8. Coast Guard Personnel Security Program (DOT/CG 633), maintained by the Office of Personnel, U.S. Coast Guard.

9. Official Coast Guard Reserve Service Record System (DOT/CG 676), maintained by the Office of Reserve, U.S. Coast Guard.

10. Investigative Record System, maintained by the Federal Aviation Administration at FAA Regional and Center Air Transportation Security Divisions; the Investigations and Security Division, Aeronautical Center; and Office of Investigations and Security, Headquarters, Washington, D.C. (DOT/FAA 815).

11. Military Training and Education Records (DOT/CG 622), maintained by the Office of Personnel, U.S. Coast Guard.

12. Files pursuant to suitability for employment with National Highway Traffic Safety Administration (DOT/NHTSA-457) containing confidential investigatory reports.

The purpose of these exemptions is to prevent disclosure of the identities of sources who provide information to the government concerning the suitability, eligibility, or qualifications of individuals for Federal civilian employment, contracts, access to classified information, or appointment or promotion in the armed services, and who are expressly or, prior to September 27, 1975, implied promised confidentiality (5 U.S.C. 552a(k) (5) and (7)).

E. Those portions of the following systems of records consisting of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4) (G), (H) and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a:

1. Officer, Enlisted and Recruiting Selection Test Files (DOT/CG 628), maintained by the Office of Personnel, U.S. Coast Guard.

2. Official Coast Guard Reserve Service Record System (DOT/CG 676), maintained by the Office of Reserve, U.S. Coast Guard.

3. Military Training and Education Records (DOT/CG 622), maintained by the Office of Personnel, U.S. Coast Guard.

4. Reference Files (DOT/NHTSA 457), maintained by the National Highway Traffic Safety Administration personnel offices to determine fitness for employment prior to hiring.

The purpose of these exemptions is to preserve the value of these records as impartial measurement standards for appointment and promotion within the Federal service.

F. Those portions of the following systems of records which consist of information properly classified in the interest of national defense or foreign policy in accordance with 5 U.S.C. 552(b)(1) are exempt from sections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4) (G), (H) and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a:

1. Investigative Record System maintained by the Assistant Inspector General for Investigations in the Office of the Inspector General (DOT/OST 100).

2. Personnel Security Records System, maintained by the Office of Investigations and Security, Office of the Secretary (DOT/OST 016).

3. Civil Aviation Security System (DOT/FAA 813), maintained by the Civil Aviation Security Service, Federal Aviation Administration.

The purpose of these exemptions is to prevent the disclosure of material authorized to be kept secret in the interest of national defense or foreign policy, in accordance with 5 U.S.C. 552(b)(1) and 552a(k)(1).

G. Those portions of the following systems of records which consist of information properly classified in the interest of national defense or foreign policy in accordance with 5 U.S.C. 552a(b)(1) are exempt from subsections (c)(3) (Accounting of Certain Disclosures) and (d) (Access to Records) of 5 U.S.C. 552a:

1. Investigative Records System (DOT/FAA 815), maintained by the Federal Aviation Administration at FAA Regional and Center Air Transportation Security Divisions; the Investigations and Security Division, Aeronautical Center; and Office of Investigations and Security, Headquarters, Washington, D.C.

The purpose of these exemptions is to prevent the disclosure of material authorized to be kept secret in the interest of national defense or foreign policy, in accordance with 5 U.S.C. 552(b)(1) and 552a(k)(1).

Appendix B—Office of the Secretary

1. *Introduction.* This Appendix, with respect to the Office of the Secretary:

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained in the Office of the Secretary;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in § 10.35 of these regulations.

An individual requiring assistance, concerning this Appendix or systems maintained in the Office of the Secretary, may contact the Privacy Act Officer, or Privacy Act Coordinator, Office of the Assistant Secretary for Administration, M-20, 400 Seventh Street, SW., Washington, D.C. 20590.

2. *Availability for Inspection and Copying.*

a. Records in systems maintained in the Office of the Secretary (OST) are available at 400 Seventh Street SW., Washington, D.C., except where otherwise noted:

(1) Records are maintained at 2100 Second Street SW., Washington, D.C., for the following systems:

(a) DOT/OST 011 Discrimination Complaint Investigative Files;

(b) DOT/OST 042 Technical Pipeline Safety Standards Committee.

(2) DOT/OST 013 Employee Management Files: Records for the employees at each location are located as delineated in the system notice.

(3) DOT/OST 015 Funds Management Records; Central records are maintained at 400 Seventh Street SW., Washington, D.C. Records for the applicable region are maintained in the office of each of the eleven Regional Emergency Transportation Coordinators, as delineated in the system notice.

(4) DOT/OST 022 National Defense Executive Reserve File: Complete records are maintained at 400 Seventh Street SW., Washington, D.C. Applicable records are maintained in a wide variety of field offices as delineated in the system notice.

(5) DOT/OST 028 Personnel Convenience Files: Employee records applicable to the Complaints Division of the Office of Civil Rights of the Office of the Secretary are located at 2100 Second Street SW., Washington, D.C. All other records are located at 400 Seventh Street SW., Washington, D.C.

(6) DOT/OST 043 Telephone Directory and Locator System: Records are stored on magnetic tape at 13 Massachusetts Avenue NW., Washington, D.C. However, access is controlled by the System Manager: Chief, Accounting Operations Center, Room 2228, 400 Seventh Street SW., Washington, D.C.

(7) DOT/OST 048 Transportation Research Activities Information System: Records are stored on magnetic tape at the Transportation Systems Center, Cambridge, Massachusetts. Individuals desiring access to their own personal data should contact the System Manager: Chief, Resources Management Division, DPA-20, Department of Transportation, 400 Seventh Street SW., Washington, D.C.

(8) DOT/OST 049 Transportation Research Information System: Records are maintained on magnetic tape at the Battelle Laboratories, Columbus, Ohio. Individuals desiring access to their own personal data should contact the System Manager: Chief, Resources Management Division, DPA-20, Department of Transportation, 400 Seventh Street SW., Washington, D.C.

(9) DOT/OST 050 Executive Team Cadre Listings: Records are maintained at 400 Seventh Street SW., Washington, D.C., and at the offices of the Regional Emergency Transportation Coordinators, as delineated in the system notice.

(10) Records are maintained at the Transportation Systems Center, Kendall Square, Cambridge, Massachusetts, for the following systems:

(a) DOT/TSC 700 Automated Management Information Systems;

(b) DOT/TSC 701 Employee Travel Records;

(c) DOT/TSC 702 Legal Counsel Information Files;

(d) DOT/TSC 703 Occupational Safety and Health Reporting System;

(e) DOT/TSC 704 Stand-by Personnel Information;

(f) DOT/TSC 706 Automated Planning System;

(g) DOT/TSC 707 Automated Manpower Distribution System;

(h) DOT/TSC 708 Combined Federal Campaign Information;

(i) DOT/TSC 709 Minority Information Files;

(j) DOT/TSC 711 Blood Donor Information File;

(k) DOT/TSC 712 Automated Payroll/Personnel/Communications/Security System;

(l) DOT/TSC 713 Employee Payroll-Manpower Distribution System;

(m) DOT/TSC 714 Health Unit Employee Medical Records;

(n) DOT/TSC 715 Bi-Weekly Personnel Status Report.

b. Records are available for inspection and copying at the applicable locations delineated above between the hours of 9 A.M. and 5:30 P.M., except Saturdays, Sundays, and holidays. Access to certain records may be restricted in accordance with exemptions applied and noticed in accordance with sections 3 (j) and (k) of the Privacy Act of 1974. Individuals desiring access to their own records should follow the instructions contained in the system notice published for each system of records. Requests for access shall be submitted to the System Manager having responsibility for the system in which the records are maintained, unless the system notice describing the system prescribes or permits submission to some other official or officials.

3. *Systems of Records.* A compilation of notices describing the systems of records maintained in the Department of Transportation is published annually in the FEDERAL REGISTER. The notices describing the systems maintained in the Office of the Secretary are published in a block within the overall compilation and each is identified by a three-digit number preceded by the acronym, OST; e.g., OST 013 (except those maintained at the Transportation Systems Center which uses the acronym, TSC; e.g., TSC 701). The basic compilation of system notices, for systems subject to the Privacy Act of 1974, which are maintained in the Office of the Secretary, is published in the FEDERAL REGISTER annually.

4. *Access to Records.* Requests for access to records are processed in accordance with the rules provided in Subpart D of these regulations.

a. A request from an individual for access to a record pertaining to such individual is granted promptly unless:

(1) The record was compiled in reasonable anticipation of a civil action or proceeding; or

(2) The system of records is one which has been exempted from the notification and access provisions of the Privacy Act by rulemaking; or

(3) The record is not part of a system of records required to be noticed in accordance with the provisions of the Privacy Act and is not otherwise required to be made available by a law or regulation; or

(4) The System Manager or other cognizant official determines that the particular circumstances justify denial of access; or

(5) The information requested is contained in and is inseparable from another individual's record.

b. When information sought from a system of records in the Office of the Secretary includes information that has been furnished by an operating element of the Department or by another agency, as the case may be, the Systems Manager or other cognizant official consults the operating element or the other agency, as the case may be, before granting access. If referral of the request to the operating element or the other agency, as the case may be, will provide a more expeditious decision with resulting probable access, the request may be referred to the operating element or the other agency, as the case may be, but the requester is notified of the referral.

c. When a Systems Manager or other cognizant official in the Office of the Secretary determines that a request for access should be denied, the request and the reason(s) for the determination are referred to the Assistant Secretary for Administration for decision. In the event of a decision to deny access, the Office of the Assistant Secretary for Administration notifies the requester in writing in accordance with section 10.51 of these regulations.

5. *Requests To Correct or Alter Records.* An individual may request that a record pertaining to such individual be amended to correct any portion thereof which such individual believes is not accurate, relevant, timely, or complete.

a. A request to amend a record must:

(1) Be in writing and signed by the individual to whom the record pertains;

(2) Be clearly marked "Request for Amendment of Record";

(3) Contain a statement that the request is being made under the provisions of the Privacy Act of 1974;

(4) Contain the name and address of the individual making the request;

(5) Specify the name and location of the systems of records, as set forth in the system notice, in which the record is maintained;

(6) Specify the title and business address of the official designated in the "Contesting Record Procedures" paragraph of the applicable system notice;

(7) Specify the particular record in the system which the individual is seeking to amend;

(8) Clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reason for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition; and

(9) Be addressed to or delivered in person to the office of the official designated in the "Contesting Records Procedures" paragraph of the applicable system notice. A request delivered to an office in person must be delivered during the regular office hours of that office.

6. *Personal Identification Requirements.* Generally, the identification rules in paragraph 10.35 of these regulations apply to systems maintained in the Office of the Sec-

retary. In addition, specific requirements for some systems are delineated below:

a. The notarized signature of the requester is required for requests by mail for notification and access to records in the following systems:

(1) OST 001 General Employee Records System;

(2) OST 030 Personal Management Convenience Files.

(NOTE: An individual's social security number is an optional means of identification, which may be supplied in lieu of notarization. Social security numbers are used on these records as authorized under the provisions of Executive Order 9397, dated November 22, 1943.)

b. The notarized signature of the requester is required for requests by mail for notification and access to records in the following systems:

(1) OST 006 Confidential Statement of Employment and Financial Interests; and

(2) OST 037 Records of Confirmation Proceeding Requirements.

c. The number of the Federal Emergency Assignee Identification Card (SF 138) issued to the requester is required for requests by mail for notification and access to records in the following systems:

(1) OST 022 National Defense Executive Reserve File;

(2) OST 036 Planning Officials for Emergency Functions and;

(3) OST 050 Executive Team Cadre Listings.

d. The name of the applicable advisory committee is required for notification and access to records in the following system: OST 008 Departmental Advisory Committee Files.

APPENDIX C—U.S. COAST GUARD

1. *Introduction.* This Appendix supplements the procedures set forth for the Department of Transportation in Subparts A through I of 49 CFR Part 10.

2. *Availability for Inspection and Copying.*

a. Individuals who wish the Coast Guard to examine a system of records covered by this part to determine whether any records in the system contain information about them or who wish to gain access to or receive copies of records which contain information about them, should address written requests either to the appropriate system manager as listed in the annual description of Coast Guard record systems appearing in the FEDERAL REGISTER or to: Commandant (G-CMA), U.S. Coast Guard Headquarters, 400 Seventh Street SW., Washington, D.C. 20590. Requests may also be delivered in person to the above address between 7:30 A.M. and 4 P.M. (Monday through Friday, excluding holidays).

b. The Coast Guard acknowledges requests for notification of the existence of a record within ten working days (excluding Saturdays, Sundays and holidays) after receipt of a completed request. The Coast Guard makes every effort within 30 days of the receipt of a request for access to a record to:

(1) Make the record available;

(2) Notify the requester of the need for additional information; or

(3) Notify the requester of any denial, either in whole or in part, of access to a record. Para. 3 of this Appendix sets forth the addresses of Coast Guard district offices and headquarters units where records in decentralized systems may be located.

3. *Systems of Records.* The annual notice of systems of records required by 5 U.S.C. 552a(e)(4) with respect to records maintained by the Coast Guard is set forth in the FEDERAL REGISTER. Assistance may be requested in exercising his or her rights by an individual addressing the Privacy Act Coordinator at one of the following U.S. Coast Guard offices nearest his residence:

a. Commander, 1st Coast Guard District, 150 Causeway Street, Boston, MA 02114.

b. Commander, 2nd Coast Guard District, Federal Building, 1520 Market Street, St. Louis, MO 63013.

c. Commander, 3rd Coast Guard District, Governors Island, New York, NY 10004.

d. Commander, 5th Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA 23705.

e. Commander, 7th Coast Guard District, Federal Building, 51 S.W. 1st Avenue, Miami, FL 33130.

f. Commander, 8th Coast Guard District, Customhouse, New Orleans, LA 70130.

g. Commander, 9th Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199.

h. Commander, 11th Coast Guard District, Heartwell Building, 19 Pine Avenue, Long Beach, CA 90802.

i. Commander, 12th Coast Guard District, 630 Sansome Street, San Francisco, CA 94126.

j. Commander, 13th Coast Guard District, Federal Building, 915 Second Avenue, Seattle, WA 98174.

k. Commander, 14th Coast Guard District, P.O. Box 48, FPO San Francisco 96610.

l. Commander, 17th Coast Guard District, FPO Seattle 98771.

m. Superintendent, U.S. Coast Guard Academy, New London, CT 06320.

n. Commanding Officer, U.S. Coast Guard Yard, Curtis Bay, Baltimore, MD 21225.

o. Commanding Officer, U.S. Coast Guard Training Center, Governors Island, New York, NY 10004.

p. Commanding Officer, U.S. Coast Guard Training Center, Cape May, NJ 08204.

q. Commanding Officer, U.S. Coast Guard Training Center, Government Island, Alameda, CA 94501.

r. Commanding Officer, U.S. Coast Guard Supply Center, 830 3rd Avenue, Brooklyn, NY 11232.

s. Commanding Officer, U.S. Coast Guard Institute, P.O. Substation 18, Oklahoma City, OK 73169.

t. Commanding Officer, U.S. Coast Guard Aircraft Repair & Supply Center, Elizabeth City, NC 27909.

u. Commanding Officer, U.S. Coast Guard Aviation Training Center, Mobile, AL 36608.

v. Commanding Officer, U.S. Coast Guard Radio Station (NMH), 7223 Telegraph Road, Alexandria, VA 22310.

w. Commanding Officer, U.S. Coast Guard Reserve Training Center, Yorktown, VA 23490.

x. Officer in Charge, Record Depot, U.S. Coast Guard Air Station, Elizabeth City, NC 27909.

y. Commander, Coast Guard Activities, Europe, London, Box 50, FPO New York 09510.

z. Commanding Officer, U.S. Coast Guard Training Center, Petaluma, CA 94952.

aa. Commander, U.S. Coast Guard Air Base, Elizabeth City, NC 27909.

bb. Commanding Officer, U.S. Coast Guard Electronics, Engineering Center, Wildwood, NJ 08260.

cc. Commanding Officer, Research & Development Center, Avery Point, Groton, CT 06340.

dd. Commanding Officer, U.S. Coast Guard Oceanographic Unit, Building 159E, Navy Yard Annex, Washington, D.C. 20590.

4. *Access to Records.*

a. The Coast Guard honors only those requests for notification, access, or amendment made by:

(1) The individual to whom the record pertains;

(2) The parent or guardian of a minor to whom the record pertains;

(3) The legal guardian of a person to whom the record pertains when that person has been declared incompetent by reason of physical or mental disability by a court having jurisdiction of the matter; or

If made by a person other than the individual to whom the record pertains, the request must specify the relationship of the requester to that individual.

b. Written requests for information or amendment must be signed by the requester. Requests for access to records containing sensitive or detailed personnel information (including, but not limited to, earnings and tax statements, employee payroll records, employee grievance and appeal files, civilian, officer, and enlisted personnel files, and health and medical records (subject to the conditions of 49 CFR 10.33 (b)) may be required to contain the following notarized certification:

I, ————, do hereby certify that I am the individual to whom the record in question pertains.

(or)

I am the parent or guardian of the minor to whom the record in question pertains.

(or)

I am the legal guardian of the individual determined by a court to be incompetent to whom the record in question pertains.

———————————————

(Notarization)

———————————————

(Signature)

———————————————

(Date)

5. *Requests to Correct or Alter Records.* The official responsible for administering a system of records, in consultation as appropriate with the System Manager, Privacy Act Coordinator, and Privacy Act Officer, initially determines whether to grant requests under 49 CFR 10.41 to amend records. Requests must be made as provided in paragraph 2a. of this Appendix. Requests for amendment must contain a complete description of the item sought to be changed and documentation to substantiate the grounds for the requested change. The Coast Guard acknowledges the receipt of completed requests for amendment within ten working days. As promptly as possible the Coast Guard advises the requester whether or not the change has been made, and in cases where a change has been made, transmits a copy of the amended record to the requester.

a. When a request for access to a record or amendment of a record is denied, in whole or in part, the manager of the system of records involved notifies the requester in writing, of the reasons for the denial and furnishes the requester a statement of the name and position or title of each person responsible for the denial. The requester also is advised of the right to file a written appeal of the adverse decision within 180 days of receipt of the initial denial. Appeals must be addressed to: Commandant (G-CMA), U.S. Coast Guard Headquarters, 400 Seventh Street, SW., Washington, D.C. 20590.

b. Within 30 working days of the receipt of a written appeal, the Commandant or his designee makes an independent review of the record and decides whether or not to make the requested disclosure or amendment. If the appeal is granted, the Coast Guard promptly notifies the requester of the decision in writing and transmits to the requester a copy of the record or amended record. If the appeal is denied, the Coast Guard promptly notifies the requester, in

writing, of the reasons for the denial and furnishes the requester a statement of the name and position or title of each person responsible for the denial. The Coast Guard also informs the requester of the right to seek judicial review of the adverse decision pursuant to 5 U.S.C. 552a(g)(1).

c. In addition to appealing an adverse determination of a request to amend a record, the requester may file a concise "statement of disagreement" setting forth the reasons for disagreeing with the refusal of the Coast Guard to amend the record. The notification by the Coast Guard of the denial of an initial request for amendment or the denial of an adininistrative appeal for an amendment informs the requester of the right to file a statement of disagreement.

d. The Commandant of the Coast Guard, by Commandant Instruction 5212.11 (26 September 1975), has redelegated to the Chief of Staff the authority under 49 CFR Part 10 to:

(1) Exempt systems of records from certain provisions of the Privacy Act;

(2) Make final administrative determinations not to disclose or amend a record; and

(3) Issue extensions of review time.

This authority may not be redelegated further.

6. *Personal Identification Requirements.*

a. When an individual requests notification, access, or amendment in person, he or she must show identification such as a driver's license, military or employment identification card, credit card, or medicare card. An individual requesting in person information about or amendment to a "sensitive" record may be required to complete the notarized certification set forth in paragraph 4.b of this Appendix.

b. The Coast Guard may require more specific information in order to establish the identify of a requester. For example, the Coast Guard may require that a legal guardian or personal representative produce certified copies of court documents appointing him to his position. The Coast Guard may independently verify the identity of a requester by telephone contact with the requester, personal identification by Coast Guard employees who may know the requester, or any other lawful means considered appropriate under the circumstances.

c. An individual may be accompanied by a person of the individual's choosing while reviewing records to which he or she has been granted access, provided that the individual signs a statement authorizing the accompanying person to do so. An individual granted access to a record may be required to sign and notarize a statement authorizing the Coast Guard to release the record to a person (e.g., his attorney) designated by the individual.

d. No request for information or amendment is considered complete until all necessary identification material has been provided. No copies of records are provided to individuals until they pay appropriate fees as set forth in 49 CFR Subpart H.

Appendix D—Federal Aviation Administration

1. *Introduction.* This Appendix:

a. Describes the procedures for determining if an individual is the subject of a record maintained by the Federal Aviation Administration;

b. Describes the availability of records and prescribes requirements for identifying an individual who requests a record pertaining to him or her;

c. Prescribes procedures for granting access to an individual upon that individual's request for the record pertaining to him or her;

d. Prescribes procedures for reviewing a request from an individual concerning the amendment of any record pertaining to him or her;

e. Prescribes procedures for making a determination on the request of an individual for amendment of any record pertaining to him or her; and

f. Prescribes procedures for an appeal within the FAA of a determination not to grant access to or amendment of records.

2. *Availability for Inspection and Copying.* Records may be inspected at the FAA facility identified for the particular system of records appearing in the systems notices published in the Federal Register. These facilities are open to the public during regular business hours, except Saturdays, Sundays, and Federal holidays.

3. *Systems of Records.*

a. A list of FAA systems of records pertaining to the Privacy Act indicating the geographic locations and the responsible systems managers has been published in the Federal Register and appears as follows:

(1) September 19, 1977, on pages 47069-47088,

(2) August 28, 1978, on page 38511, and

(3) May 15, 1979, on pages 28439-28447.

b. Any individual who is unable to determine in which FAA-maintained system the records pertaining to him or her may be found may submit a written request for assistance to the attention of the Privacy Act Coordinator located at the region or center nearest to his residence. The addresses for the regional and center facilities of the FAA are listed below:

(1) FAA Headquarters, 800 Independence Avenue SW., Washington, D.C. 20591;

(2) Alaskan Region, 632 Sixth Avenue, Anchorage, AK 99501;

(3) Central Region, 601 East 12th Street, Kansas City, MO 64106;

(4) Southern Region, 3400 Whipple Street, East Point, GA (Mailing address: P.O Box 20636, Atlanta, GA 30320);

(5) Southwest Region, 4400 Blue Mound Road (Mailing address: P.O. Box 1689, Fort Worth, TX 76101);

(6) Western Region, 5651 West Manchester Avenue (Mailing address: P.O. Box 92007, Los Angeles, CA 90009);

(7) Eastern Region, Federal Building, JFK International Airport, Jamaica, NY 11430;

(8) Pacific Region, 1833 Kalakaua Avenue (Mailing address: P.O. Box 4009, Honolulu, HI 96813);

(9) Aeronautical Center, 6400 South MacArthur Boulevard (Mailing address: P.O. Box 25082, Oklahoma City, OK 73125);

(10) National Aviation Facilities Experimental Center, Tilton Road, Route 563 (near Pomona, NJ), (Mailing address: Atlantic City, NJ 08405);

(11) New England Region, 12 New England Executive Park, Burlington, MA 01803;

(12) Great Lakes Region, 2300 East Devon, Des Plaines, IL 60018;

(13) Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; and

(14) Northwest Region, FAA Building, 9010 East Marginal Way South, King County International Airport (Boeing Field), Seattle, WA 98108.

4. *Access to Records.*

a. Any individual desiring to inspect a record or obtain a copy of a record pertaining to him or her must present a written request in accordance with the provisions of this section. An individual making a request under this section may either appear in person or submit a request by mail to the address and attention of the system manager as it appears in the list of systems of records published in the FEDERAL REGISTER. The individual must first determine in which system of records he or she believes the particular records pertaining to him or her are maintained by examining the categories of records and routine uses in the list of the systems of records published in the FEDERAL REGISTER and available at the addresses set forth in paragraph 3.b of this Appendix.

b. The individual must include in the request the information necessary to identify the specific system of records as it appears in the list of the systems of records of the FAA published in the FEDERAL REGISTER.

c. Upon request by any individual to gain access to an FAA record that contains information pertaining to him or her, the FAA official responsible for the record informs the individual whether the requested record is exempt under subpart G of this part.

d. An individual making a request under this section is permitted to inspect and have a copy made of any record pertaining to him or her in a form comprehensible to him or her, if—

(1) He or she has given identification in accordance with section 6 of this Appendix;

(2) The record is not exempt under subpart G of this part; and

(3) The record was not compiled in reasonable anticipation of a civil action or proceeding. For medical records see § 10.35(d).

e. Notwithstanding paragraph d of this section, if an individual requesting a record pertaining to him or her is accompanied by a person of his or her own choosing to review the record, the individual making the request must submit a signed statement authorizing the discussion of the record in the presence of the accompanying person.

f. Each request for a record determined to be releasable under paragraph d of this section is complied with within ten days, excluding Saturdays, Sundays, and Federal holidays. If additional time is necessary to make the requested record comprehensible to the individual requesting it, the FAA official responsible for the record notifies the individual within ten days of the request of the estimated time required to fill the request.

g. Any individual whose request for access to a record pertaining to him or her is denied may file a written appeal to the Administrator, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Appeals submitted under this section must comply with the requirements of § 10.51 of this part.

5. *Requests to Correct or Alter Records.*

a. Any individual may request an amendment of any record pertaining to him or her maintained by the FAA in a system of records, by submitting the request in writing to the attention of the FAA official responsible for the record at the address appearing in the list of systems of records published in the FEDERAL REGISTER.

b. Each request for an amendment of a record must be accompanied by a written explanation as to why the individual believes the present record is not accurate, timely, relevant, or complete. The individul making the request may submit any documentation he or she wishes in support of his request.

c. Upon receipt of a request for an amendment of a record, the FAA official responsible for the record reviews the record and supporting documentation and determines if there is a sufficient basis upon which to make a decision to make the requested amendment. In any case, the request must be acknowledged within 10 days.

d. If the FAA official responsible for the record determines under paragraph c of this section that additional information is necessary before a decision can be made as to whether to make the requested amendment, the official notifies the individual making

the request to amend specifying what additional information is necessary.

e. If the FAA official responsible for the record determines that the requested amendment should be made, the official amends the record, notifies the individual making the request, and sends to that individual a copy of the corrected record, as well as to other persons or agencies to whom the record may have been disclosed (See 49 CFR 10.23(d)).

f. If the FAA official responsible for the record determines that the requested amendment should be denied, the official forwards to his supervisor the request for amendment with all supporting documentation and reasons for the denial.

g. If the supervisor determines that the requested amendment should be made, the supervisor follows the procedures in paragraph e of this section.

h. If the supervisor determines that the requested amendment should be denied, the supervisor notifies the individual making the request of the denial, the reasons therefor, and informs the individual of the FAA procedures for appealing the denial.

i. Any individual whose request for correction or alteration of a record pertaining to him or her is denied may file a written appeal to the Administrator, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591. Appeals submitted under this section must comply with the requirements of § 10.51 of this part.

6. *Personal Identification Requirements.*

a. Each individual making a request under this Appendix for a record pertaining to him or her must present appropriate identification before the requested record is released. Types of appropriate identification include—

(1) For requests made in person, a driver's license or employee identification card; and

(2) For requests made by mail, name (printed or typed, and signature) and date of birth, or the unique identifier used in the system of records.

b. If an individual cannot provide appropriate identification as required in paragraph 6.a of this Appendix, or if the record requested is particularly sensitive, the FAA official responsible for the record may require the individual to sign a statement certifying his or her identity and understanding that knowingly and willfully to request or obtain any record concerning an individual from the FAA under false pretenses is a misdemeanor punishable by a fine of up to $5,000 as provided in 5 U.S.C. 552a(i)(3).

Appendix E—Federal Highway Administration

1. *Introduction.* This Appendix, with respect to the Federal Highway Administration (FHWA);

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained in the FHWA;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in paragraph 10.35 of these regulations.

2. *Availability for Inspection and Copy.* Places and times at which records are available for inspection and copying, and the system of records and systems managers having authority at each place.

a. *Headquarters:* The Federal Highway Administration, 400 7th Street SW., Washington, D.C. 20590. Time: 7:45 a.m.—4:15 p.m.

Systems of Records and Responsible Systems Managers:

1. Accounts Receivable DOT/FHWA-Chief General Ledger and Funds Control Section.

2. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Occupational Safety Engineer.

3. Driver Waiver File (BMCS) DOT/FHWA—Chief, Driver Requirements Branch.

4. Employee Utilization Monthly Report DOT/FHWA—Chief, Data Systems Division.

5. Investigation Case File DOT/FHWA—Chief, Investigations and Special Inquiry Division.

6. Medal of Honor File DOT/FHWA—Chief, Compliance Division.

7. Memorandum of Monthly Performance of Key Punch Operators DOT/FHWA—Chief, TCC Operation (Groups A and B).

8. Motor Carrier Accident File (BMCS) Property and Passenger—Chief, Accident Analysis Branch.

9. Occupational Safety and Health Accident Reporting System DOT/FHWA—Occupational Safety Engineer.

10. Payroll Administration DOT/FHWA—Chief, Payroll and Employee Records Section.

11. Personnel Records—(CSC Governmentwide) DOT/FHWA—Chief, Personnel Programs Division.

12. Travel Advance File DOT/FHWA—Chief, Voucher Review and Disbursement Section.

13. Travel Order (Change of Duty Station) DOT/FHWA—Chief, Voucher Review and Disbursement Section.

14. University and Industry Programs Coding and Filing Systems DOT/FHWA—Administrative Assistant—National Highway Institute.

15. Panel for Santa Monica Demonstration Project DOT/FHWA—Chief, Urban Planning Division.

b. *Regional Offices:* Region 1—Federal Highway Administration, Leo W. O'Brien Federal Building, Albany, New York 12207. Time: 8:00 a.m.-4:30 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License)—DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases DOT/FHWA—Regional Counsel.

3. Travel Advance File— DOT/FHWA Executive Officer, Region 3—Federal Highway Administration, George H. Fallon Federal Office Building, 31 Hopkins Plaza, Baltimore, Maryland 21201. Time: 8:00 a.m.-4:30 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases— DOT/FHWA—Regional Counsel.

3. Travel Advance File—DOT/FHWA—Executive Officer, Region 4—Federal Highway Administration, 1720 Peachtree Road, NW., Atlanta, Georgia 30309. Time: 7:45 a.m.-4:15 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Travel Advance File—DOT/FHWA Executive Officer, Region 5—Federal Highway Administration, 18209 Dixie Highway, Homewood, Illinois 60430. Time: 7:30 a.m.-4:00 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Travel Advance File—DOT/FHWA—Executive Officer. Region 6—Federal Highway Administration, 819 Taylor Street, Fort Worth, Texas 76102. Time: 8:00 a.m.-4:30 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Travel Advance File—DOT/FHWA—Executive Officer, Region 7—Federal Highway Administration, 6301 Rockhill Road, Kansas City, Missouri 64131. Time: 7:45 a.m.-4:15 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Travel Advance File—DOT/FHWA—Executive Officer. Region 8—Federal Highway Administration, P.O. Box 25246, Denver Federal Building Center, Denver, Colorado 80225. Time: 7:45 a.m.-4:15 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Payroll Administration DOT/FHWA—Appropriate Finance Officer.

4. Travel Advance File—DOT/FHWA—Executive Officer. Region 9—Federal Highway Administration, 2 Embarcadero Center, P.O. Box 7616, San Francisco, California 94120. Time: 7:45 a.m.-4:15 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License)—DOT/FHWA—Executive Officer.

2. Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases—DOT/FHWA—Regional Counsel.

3. Travel Advance File DOT/FHWA—Executive Officer. Region 10—Federal Highway Administration, 222 SW. Morrison Street, Portland, Oregon 97204. Time: 8:00 a.m.-4:45 p.m.

Systems of Records and Responsible Systems Managers:

1. Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License)—DOT/FHWA—Executive Officer.

2. Travel Advance File—DOT/FHWA—Executive Officer. Region 15—Federal Highway Administration, 1000 North Glebe Road, Arlington, Virginia 22201. Time: 7:45 a.m.-4:15 p.m.

Systems of Records and Responsible Systems Managers:

Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Executive Officer.

c. Division Offices (For location and hours of duty see 49 CFR Part 7).

Systems of Records and Responsible Systems Managers:

Applications for U.S. Government Motor Vehicle Operator's Identification Card (U.S. Government Drivers License) DOT/FHWA—Administrative Managers.

3. *Access to Records:*

a. Each individual desiring to determine whether a record pertaining to him or her is contained in a system of records, or desiring access to such record, or to obtain a copy of such record, shall make request to the appropriate System Manager. In appropriate circumstances, oral requests are acted upon. Each request must specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located.

4. *Requests to Correct or Alter Records:*

a. The FHWA allows individuals to request amendment of their personal records to the extent that such amendment does not violate existing statutes, regulations, or administrative procedures. Requests to amend personnel records of active employees should be addressed to the responsible system managers specified in paragraph 2 above.

b. The System Managers provide written acknowledgment of the receipt of a request to amend a record to the individual within 10 days. However, if the request can be reviewed, processed and the individual notified of compliance or denial within the 10-day working period, no acknowledgment is required.

c. If the System Manager agrees with an individual's request to amend the person's record, the following steps are taken:

1. Correct the record accordingly,

2. Advise the individual in writing, and

3. If an accounting of disclosure has been made, advise all previous recipients of the record of the fact that the correction was made and the substance of the correction.

d. If the System Manager disagrees with all or any portion of the request to amend a record, he or she:

1. Proceeds as described above with respect to those portions of the record which will be amended.

2. Advises the individual of the refusal and the reason for not amending a record, indicating the name and title or position of each person responsible for the denial, and

3. Informs the individual of the right to appeal the decision not to amend a record to: Associate Administrator for Administration, Federal Highway Administration, Washington, D.C. 20590.

e. If after this review the FHWA refuses to amend the record on the individual requested, the FHWA advises the individual:

1. Of the refusal and the reason for it,

2. Of the individual's right to file a concise statement of the reasons for disagreeing with the decision of the FHWA,

3. The procedures for filing the statement of disagreement,

4. That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed, and

5. Of the individual's right to seek judicial review of the FHWA's refusal to amend a record.

f. The final FHWA determination on the individual's request is concluded within 30 days of the receipt of the appeal unless for good cause shown, the Associate Administrator for Administration extends such period. Such final administrative decision addresses all information and arguments relied upon by the individual.

g. Each application for review by FHWA must indicate that it is an appeal from a denial of a request made under the Privacy Act. The envelope in which the application is sent should be marked prominently with the words "Privacy Act".

If these requirements are not met, the time limits described in § 10.43 do not begin until the application has been identified by an employee of the FHWA as an application under the Privacy Act and has been received by the appropriate office.

h. The Associate Administrator for Administration may require the person making a request to furnish additional information, or proof of factual allegations, and may order other appropriate proceedings. His or her decision as to the availability of a record or whether to amend a record is administratively final subject to the concurrence of the DOT General Counsel or his or her delegate. However, requests for review of denials of information contained in Government-wide systems of personnel records, which includes the FHWA Personnel Records System, are handled by the Civil Service Commission in accordance with 5 CFR 294.108 and 5 CFR 297.108.

i. If the Associate Administrator for Administration also refuses to grant access or to correct the individual's record, he or she advises the individual of:

1. The reason(s) for the refusal and the names, and titles or positions of each person responsible for the denial;

2. The individual's right to file a statement of disagreement; that the statement will be made available to anyone to whom the record is subsequently disclosed, and to prior recipients of the record (see § 10.23(d)), and

3. The right to bring suit in the District Court of the United States in the district in which the individual resides, the district in which his principal place of business is located, the district in which the record(s) is located, or the District of Columbia.

5. *Personal Identification Requirements:*

a. When a record is applied for in person, the person so applying must, unless personally known to the custodian of the records, furnish adequate identification. Such identification may consist of an employee identification card, Medicare Card, driver's license, or a similar document.

b. When a record is applied for by mail, sufficient information to identify the individual must be furnished, and a notarized statement as to the identity of the requester may be required in some instances when the record involved contains particularly sensitive information in the judgment of the systems manager.

Appendix F—Federal Railroad Administration

1. *Introduction.* This Appendix, with respect to the Federal Railroad Administration (FRA):

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained in the Federal Railroad Administration;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in § 10.35 of these regulations.

2. *Availability for Inspection and Copying.* Places and times at which records are available for inspection and copying and the systems of records and systems managers having authority to deny requests for disclosure at each facility.

a. Records in systems maintained in the Federal Railroad Administration are available at the Alaska Railroad, Anchorage, Alaska 99510, 9:00 a.m.-4:00 p.m.

Systems of Records and Responsible Systems Managers:

1. Alaska Railroad Examination of Operating Personnel; DOT/FRA Operations Officer (System Manager).

2. Alaska Railroad Personnel and Pay Management Information System; DOT/FRA—General Manager (System Manager).

3. Alaska Railroad Security and Freight Claims Investigatory Files; DOT/FRA—Chief, Security and Claims Office (Systems Manager).

b. *Places:* The Alaska Railroad, Anchorage, Alaska 99510. Hours: 9:00 a.m.-4:00 p.m.

Systems of Records and Responsible Systems Managers:

1. Application for (Vehicle) Operator's Identification Card; DOT/FRA—Director, Office of Administrative Operations (System Manager).

2. Confidential Statement of Employment and Financial Interest; DOT/FRA—Chief Counsel, Office of the Chief Counsel (System Manager).

3. Employee Travel Records; DOT/FRA—Accounting Officer, Accounting Division (System Manager).

4. Occupational Safety and Health Reporting System; DOT/FRA—FRA Safety Manager, Office of Administrative Operations (System Manager).

5. Office of Safety Past Employees Files; DOT/FRA—Deputy Associate Administrator for Safety (System Manager).

6. Personnel and Pay Management Information Systems; DOT/FRA—Director, Office of Personnel and Training (System Manager).

7. Travel Advance Records; DOT/FRA—Director, Office of Administrative Operations (System Manager).

8. Work Measurement System; DOT/FRA—Director, Office of Management Systems.

c. *Places: Regional Offices as follows:*

Region 2, Federal Railroad Administration, Philadelphia, Pa. 19106.

Region 3, Federal Railroad Administration, College Park, Ga. 30337.

Region 4, Federal Railroad Administration, Chicago, Illinois 60605.

Region 5, Federal Railroad Administration, Ft. Worth, Texas 76102.

Region 6, Federal Railroad Administration, Portland, Oregon 97204.

Region 7, Federal Railroad Administration, San Francisco, California 94102.

Region 8, Federal Railroad Administration, Kansas City, Missouri 64106

Hours: 9:00 a.m.-4:00 p.m.

Systems of Records and Responsible Systems Managers at each Region:

Regional Personnel Convenience Files; DOT/FRA—Regional Directors (Systems Manager)

d. *Place: Transportation Test Center* (TTC) Pueblo, Colorado 81001. Hours: 9:00 a.m.-4:00 p.m.

System of Records and Responsible System Manager:

Transportation Test Center Employee Service Record File—Director, TTC (System Manager)

Transportation Test Center Cost Tracking System—Director TTC (System Manager)

3. *Access to Records.*

a. Each individual desiring to determine whether a record pertaining to him or her is contained in a system of records or to obtain a copy of such a record, shall make his request in writing to the appropriate official listed as responsible system manager in this Appendix. Each request shall specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located.

b. FRA allows individuals to request amendment of their personal records to the extent that such amendment does not violate existing statutes, regulations, or administrative procedures. Requests to amend personal records of active employees should be addressed to the responsible system managers specified in 2.3A-D.

c. The system managers provide written acknowledgment of the receipt of a request to amend a record to the individual within ten days. However, if the request can be reviewed, processed and the individual notified of compliance or denial within the ten-day working period, no acknowledgment is required.

d. If FRA agrees with an individual's request to amend the person's record, the following steps are taken:

1. Advises the individual in writing;

2. Corrects the record accordingly; and

3. If a prior disclosure has been made, advises all previous recipients of the record of the correction and its substance.

e. If FRA, after an initial review by the system manager of a request to amend a personal record, disagrees with all or any portion of it, FRA:

1. Advises the individual of refusal and the reasons for it;

2. Informs the individual of procedures to request a further review;

f. If an individual disagrees with the initial determination, the individual may file a request for a further review of that determination. The request for a review should be addressed to:

Attn: Privacy Act of 1974, Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590.

g. If after this review FRA refuses to amend the record as the individual requested, FRA advises the individual:

1. Of refusal and the reasons for it;

2. Of the individual's right to file a concise statement of the reasons for disagreeing with the decision of the Administration;

3. The procedures for filing the statement of disagreement;

4. That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed;

5. Of the individual's right to seek judicial review of the refusal to amend a record.

h. The final FRA determination on the individual's request is concluded within thirty (30) working days unless the FRA Administrator determines that a fair and equitable review cannot be completed in that timeframe. If additional time is required, the individual is informed in writing of reasons for the delay and of the estimated date on which the review is expected to be completed.

4. *Procedures for Establishing Indentity of Individual Making a Request:*

a. Disclosure of personnel records requires that the individual produce an identification card: employee identification, annuitant identification, Medicare cards, or driver's license are examples. For records disclosed by mail, FRA requires identifying information to locate the record, i.e., employee identification number, name, date of birth or social security number. A comparison of the signature of the requester and those in the record is used to determine identity.

b. If an individual can provide no suitable documents for identification, FRA requires a signed statement asserting identity and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000 under 5 U.S.C. 552a(i)(3).

Appendix G—National Highway Traffic Safety Administration

1. *Introduction.* This Appendix, with respect to the National Highway Traffic Safety Administration:

a. Describes the places and times at which records will be available for inspection and copying;

b. Indicates the systems of records maintained in the National Highway Traffic Safety Administration;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in § 10.35 of these regulations.

2. *Availability for Inspection and Copying.* Records of the National Highway Traffic Safety Administration, hereafter referred to as NHTSA, are located at NHTSA headquarters, Washington, D.C., and at regional office locations, both described below. Records created, collected, maintained and used in various demonstration

and research projects as contract requirements of NHTSA are located at various points in the several States and the Commonwealth of Puerto Rico.

a. All NHTSA Headquarters offices are open from 7:45 A.M. to 4:15 P.M., each day except Saturdays, Sundays, and Federal legal holidays. The main headquarters Office is located at 400 Seventh Street SW., Washington, D.C. 20590. The Office of Vehicle Safety Compliance, Enforcement Programs; the National Driver Register, Traffic Safety Programs, and the Office of Research and Development are located at the Trans Point Building, 2100 2nd Street SW., Washington, D.C. 20590.

b. NHTSA Regional offices are located at the following addresses and are open during the indicated hours each day, except for Saturdays, Sundays, and Federal legal holidays:

(1) Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), 55 Broadway, Cambridge, Massachusetts 02142 (7:45 A.M.–4:15 P.M.).

(2) Region II (New Jersey, New York, Puerto Rico, Virgin Islands), 222 Mamaroneck Avenue (Room 204), White Plains, New York 10601 (7:45 A.M.–4:15 P.M.).

(3) Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Airport Plaza Building, 6701 Elkridge Landing Road, Linthicum, Maryland 21090 (8:00 A.M.–4:30 P.M.).

(4) Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Suite 501, 1720 Peachtree Road, N.W., Atlanta, Georgia 30309 (7:45 A.M.–4:15 P.M.).

(5) Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Suite 214, Executive Plaza, 1010 Dixie Highway, Chicago Heights, Illinois 60411 (8:00 A.M.–4:30 P.M.).

(6) Region VI (Arkanasas, Louisiana, New Mexico, Oklahoma, Texas), 819 Taylor Street, Room 11A26 Fort Worth, Texas 76102 (8:00 A.M.–4:30 P.M.).

(7) Region VII (Iowa, Kansas, Missouri, Nebraska), 6301 Rockhill Road, Kansas City, Missouri 64111 (7:45 A.M.–4:15 P.M.).

(8) Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 330 South Garrison Street, Lakewood, Colorado 80226 (7:45 A.M.–4:15 P.M.).

(9) Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Suite 610, Two Embarcadero Center, San Francisco, California 94111 (7:45 A.M.–4:15 P.M.).

(10) Region X (Alaska, Idaho, Oregon, Washington), 3140 Federal Building, 915 Second Avenue, Seattle, Washington 98174 (7:45 A.M.–4:15 P.M.).

c. NHTSA demonstration and research project records may be created, collected, maintained, and used for the purposes of NHTSA contract requirements. These records are maintained at various points in the several States and the Commonwealth of Puerto Rico. Since these project contractors only act as agents for NHTSA, and to prevent unauthorized dsclosure of information that may be subject to the provisions of the Privacy Act of 1974, management of the systems has been retained by appropriate officials of NHTSA. Access to the published systems may be obtained by corresponding with the systems manager indicated for the system of records found in the citations in paragarph 3 of this appendix. Appropriate personal identification must be furnished in accordance with paragraph 4. These officials should be notified of any inaccuracy of the record and, also, are responsible for considering requests for correction or alteration of the record.

3. *Systems of Records.* A list of NHTSA systems of records pertaining to the Privacy Act indicating the geographic locations and the responsible systems managers has been published in the FEDERAL REGISTER and appears as follows: Vol. 42, No. 181, September 19, 1977, beginning on page 47099.

4. *Access to Records.*

a. Individuals desiring to determine whether records pertaining to them are contained in systems of records covered by this Appendix or desiring access to records covered by this Appendix, or to obtain copies of such records, shall make written requests providing appropriate identification of the system and proof of their identity in the same manner as former employees described in 4.c below. When an individual is not capable of personally providing the required information, a second party request may be honored if a duly attested authorization, power of attorney, or appropriate court order is submitted with the request.

b. Decision to release or deny requested records is made by the system manager, identified in the citations of paragraph 3 of this Appendix, within ten working days of the receipt of the request. A person seeking review of a denial of the disclosure of a record may appeal to the NHTSA Associate Administrator for Administration, 400 Seventh Street SW., Washington, D.C. 20590, preferably within 180 days of the initial denial. Decision on the request for review is made in writing within 30 working days from the receipt of the request for reconsideration of disclosure. For additional details see sections 10.45 and 10.51 of these rules.

c. Employees and former employees of NHTSA may obtain access to and consideration of the amendment of their records by providing a current Department of Transportation (DOT) identification card (Form D–1600.1.9), a DOT retired employee identification card (Form D–1680.2), Medicare card, attested signed request, or such other identification that may prove the validity of their claims.

d. Since nearly all NHTSA systems of records are maintained on electronic data processing equipment, it may require up to 48 hours to obtain individual records due to computer scheduling requirements. It is in the interest of the individual, therefore, to request information in writing rather than in person.

5. *Requests to Correct or Alter Records.*

a. Individuals may request correction or alteration of records pertaining to them by addressing such requests to the system managers or the NHTSA Privacy Act Coordinator, the addresses of whom are contained in the citation of paragraph 3 of this Appendix.

b. Since the records of the National Driver Register merely contain partial records of the States' motor vehicle records, they are susceptible to correction or alteration only to the extent that such records are at variance with the State records. Persons seeking to correct their State motor vehicle records should address requests to their respective States' motor vehicle licensing authorities.

c. The system manager, in accordance with 49 CFR 10.41, provides written acknowledgment of the receipt of a request to amend a record to the individual within ten working days. If the request can be reviewed, processed, and the individual notified of compliance or denial of the request within the ten working day period, no acknowledgment is required.

d. When decision is made by the system manager to comply with an individual's request to amend the person's record, the following steps are taken within 30 working days from the date of acknowledgment of the request:

(1) Advises the individual of the decision in writing;

(2) Corrects the record accordingly; and

(3) Advises all previous recipients of the record, if an accounting of disclosure has been made, of the correction.

e. When decision is made, after initial review by the system manager of a request to amend a personal record, to disagree with all or any portion of the requested amendment, the following steps are taken within 30 working days from the date of acknowledgment of the request.

(1) Advises the individual of refusal and the reasons therefor; and

(2) Informs the individual of the procedures for appeal to the NHTSA Administrator for further review.

f. If the individual disagrees with the initial determination of the system manager, the individual may file a request for further review of that determination. This request for review should be addressed to the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590.

g. If after review the Administrator agrees to the amendment of the record, the procedures of subparagraph 5.d of this Appendix are followed. If amendment of the record is refused as requested by the individual, the individual is advised:

(1) Of the refusal and reasons therefore, and the names and titles of positions of each person responsible for the determination;

(2) Of the individual's right to file, together with the appropriate procedures, a concise statement of the reasons for disagreeing with the decision of the Administrator;

(3) Of the fact that the statement which is filed by the requester is made available to prior recipients and anyone to whom the record is subsequently disclosed; and

(4) Of the individual's right to seek judicial review of the administrator's refusal to amend a record.

h. The final determination to refuse an individual's request for amendment of a record is concluded within 30 working days after the receipt of the appeal to the Administrator. If a fair and equitable review cannot be completed by the stipulated time, the Administrator informs the individual in writing of the reasons for delay and provides an estimated date on which completion of the review is expected.

6. *Personal Identification Requirements.* The NHTSA does not demand any personal identification beyond that specified by § 10.35 of this part.

Appendix H—Urban Mass Transportation Administration

1. *Introduction.* This Appendix, with respect to the Urban Mass Transportation Administration (UMTA):

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained in the Urban Mass Transportation Administration;

c. Identifies the officials having authority to deny requests for access for records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in paragraph 1035 of these regulations.

2. *Availability for Inspection and Copying.* In accordance with Title 49, Part 10, Subpart A, Section 10.1, dealing with the maintenance of an access to records pertaining to individuals under the Privacy Act of 1974 (Pub. L. 93-579), the following places and times at which individual's records are available for inspection and copying, and the titles of the officials who are reponsible system managers are submitted.

a. Regional Offices as follows:

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(1) Region I, Urban Mass Transportation Administration, Cambridge, MA 02142;

(2) Region II, Urban Mass Transportation Administration, New York, NY 10007;

(3) Region III, Urban Mass Transportation Administration, Philadelphia, PA 19106;

(4) Region IV, Urban Mass Transportation Administration, Atlanta, GA 30309;

(5) Region V, Urban Mass Transportation Administration, Chicago, IL 60606;

(6) Region VI, Urban Mass Transportation Administration, Ft. Worth, TX 76102;

(7) Region VII, Urban Mass Transportation Administration, Kansas City, MO 64131;

(8) Region VIII, Urban Mass Transportation Administration, Denver CO 80202;

(9) Region IX, Urban Mass Transportation Administration, San Francisco, CA 94111; and

(10) Region X, Urban Mass Transportation Administration, Seattle, WA 98174.

b. Hours: 8:30 A.M. to 5 P.M., local time.

c. System of Records: Regional Personnel Convenience Files at each location.

d. System Managers: Regional Directors or Chiefs are System Managers

e. Headquarters: Urban Mass Transportation Administration, Washington Headquarters, Washington, D.C. 20590; Hours: 8:30 A.M. to 5 P.M.

3. *Systems of Records.*

a. Confidential Statement of Employment and Financial Interest—DOT/UMTA, Chief Counsel, Office of the Chief Counsel;

b. Occupational Safety and Health Reporting System, Director of Personnel Division;

c. Litigation and Claims File—Chief Counsel, Office of Chief Counsel;

d. Grant Applicants List, Director, Grant Management Division;

e. Contract Information System, Director, Procurement Division;

f. Unsolicited Research and Development Grants, Director, Grant Management Division;

g. Complaints of Discrimination, Director, Office of Civil Rights;

h. Employee Travel Vouchers, Chief, Accounting Branch;

i. Accounts Receivable, Chief, Accounting Branch;

j. Equal Employment Opportunity, Minority/Female Statistical Reporting System, Director, Office of Civil Rights;

k. Minority Recruitment File, Director, Office of Civil Rights;

l. UMTA Sponsored Reports—Authors File, Director, Office of Transit Management;

m. Blood Donors File, Director, Administrative Services Division;

n. Approved Grants, Director, Administrative Services Division;

o. Closed-Out Grants, Director, Administrative Services Division; and

p. Docket DOT/UMTA, Chief Counsel, Office of Chief Counsel.

4. *Access to Records.* Each individual desiring to determine whether a record pertaining to him or her is contained in a system of records or to obtain a copy of such a record, shall make request in writing to the official specified in paragraph 1 of this Appendix. Each request shall specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located.

5. *Requests to Correct or Alter Records.*

a. The Administration allows individuals to request amendment of their personal records to the extent that such amendment does not violate existing statutes, regulations, or administrative procedures. Requests to amend personal records of active employees should be addressed to the responsible system manager specified in paragraph 1.

b. The system manager provides a written acknowledgment of the receipt of a request to amend a record to the individual within ten days. However, if the request can be reviewed and processed and the individual notified of compliance or denial within the ten-day working period, no separate acknowledgment is required.

c. If UMTA agrees with an individual's request to amend the person's record, the following steps are taken:

(1) Advises the individual in writing;

(2) Corrects the record accordingly; and

(3) Advises all previous recipients of the record which was corrected of the correction and its substance.

d. If UMTA, after an initial review by the system manager of a request to amend a personal record, disagrees with all or any portion of it, it:

(1) Advises the individual of refusal and the reasons for it; and

(2) Informs the individual of procedures to request a further review.

e. If an individual disagrees with the initial determination, the individual may file a request for a further review of that determination. This request for a review should be addressed to: Privacy Act Officer, UAD-60, 400 Seventh Street SW., Washington, D.C. 20590.

f. If after this review UMTA refuses to amend the record as the individual requested, UMTA advises the individual:

(1) Of refusal and the reasons for it;

(2) Of the individual's right to file a concise statement of the reasons for disagreeing with the decision;

(3) The procedures for filing the statement of disagreement;

(4) That the statement which is filed is made available to anyone to whom the record is subsequently disclosed; and

(5) Of the individual's right to seek judicial review of the Administration's refusal to amend a record.

g. The final determination on the individual's request is concluded within 30 working days unless the UMTA Administrator determines that a fair and equitable review cannot be completed in that period. If additional time is required, the individual is informed in writing of reasons for the delay and of the estimated date on which the review is expected to be completed.

h. For personnel-related records final Civil Service Commission determination may apply within 30 working days following the procedures explained above.

6. *Personal Identification Requirements.*

a. Disclosure of personal records requires that the individual produce an identification card; employee identification, annuitant identification, Medicare card, and driver's license are examples. For records disclosed by mail, UMTA requires identifying information to locate the record, *i.e.*, employee identification number, name, date of birth, or social security number. A comparison of the signature of the requester and those in the record is used to determine identity.

b. If an individual can provide no suitable documents for identification, UMTA requires a signed statement asserting identity and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000 under citation 3(i)3 of the Privacy Act.

Appendix I—Saint Lawrence Seaway Development Corporation

1. *Introduction.* This Appendix, with respect to the Saint Lawrence Seaway Development Corporation:

a. Describes the places and times at which records are available for inspection and copying;

b. Indicates the systems of records maintained;

c. Identifies the officials having authority to deny requests for access to records;

d. Describes the procedures to be followed in requesting correction of a record; and

e. Describes identification requirements which may be in addition to those delineated in § 10.35 of these regulations.

2. *Availability for Inspection and Copying.*

a. Place and time for records inspection and copying: Saint Lawrence Seaway Development Corporation, Administration Building, Andrews Street, Massena, New York 13662; Massena Office: 9:00 a.m.-4:00 p.m.

b. Systems of records located at each facility: *Administration Building:* Claimants under Federal Tort Claims Act, Data Automation Program Records, Employees' Compensation Records, Emergency Operating Records (Vital Records).

c. Official having authority to deny requests for disclosure of records under this part:

Resident Manager, Saint Lawrence Seaway Development Corporation, Administration Building, Andrews Street, Massena, New York 13662.

3. *Systems of Records:* A complete listing of the systems of records maintained by the Saint Lawrence Seaway Development Corporation has been published in the Federal Register as follows: September 19, 1977, pages 47138-47140.

4. *Access to Records:* Each individual desiring to determine whether a record pertaining to him or her is contained in a system of records or to obtain a copy of such record, shall make request in writing to the address provided in Section 2 of this Appendix. Each request shall specify the name of the requesting individual and the system of records in which the subject record is located or thought to be located.

5. *Requests to Correct or Alter a Record:*

a. Any person who desires to have his or her own record corrected shall submit a written request.

b. Only the individual to whom the record pertains may make the written request and it shall be signed by that person.

c. Request should state the reasons that the record should be corrected and that the request is made pursuant to the Privacy Act; alternatively the requester may mark "Privacy Act Amendment Request" on the envelope in which the request is submitted.

d. Requests for correction of records shall be submitted to the Personnel Officer, Saint Lawrence Seaway Development Corporation, Administration Building, Andrews Street, Massena, New York 13662.

6. *Personal Identification Requirements:* Refer to § 10.35 for normal requirements. In those cases involving mail requests for sensitive records, *i.e.*—medical records, the records, the requester's signature shall be notarized.

Appendix J—Research and Special Programs Administration

The Research and Special Programs Administration (RSPA) will operate under the general rules of Part 10 (49 CFR Part 10) until specific procedures are deemed necessary for the RSPA.

PART 21—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

21.1 Purpose.
21.3 Application of this part.
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21.7 Assurances required.
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21.11 Conduct of investigations.
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APPENDIX A—ACTIVITIES TO WHICH THIS PART APPLIES
APPENDIX B—ACTIVITIES TO WHICH THIS PART APPLIES WHEN A PRIMARY OBJECTIVE OF THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE EMPLOYMENT
APPENDIX C—APPLICATION OF PART 21 TO CERTAIN FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF TRANSPORTATION

AUTHORITY: Sec. 602, 42 U.S.C. 2000d-1, unless otherwise noted.

SOURCE: 35 FR 10080, June 18, 1970, unless otherwise noted.

§ 21.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

§ 21.3 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the federally assisted programs and activities listed in Appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended under any such program before the effective date of this part, except where such assistance was subject to the title VI regulations of any agency whose responsibilities are now exercised by this Department;

(3) Any assistance to any individual who is the ultimate beneficiary under any such program; or

(4) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 21.5(c).

The fact that a program or activity is not listed in Appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to Appendix A to this part.

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

§ 21.5 Discrimination prohibited.

(a) General: No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) Specific discriminatory actions prohibited:

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin—

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) Examples demonstrating the application of the provisions of this section to certain programs of the Department of Transportation are contained in Appendix C of this part.

(7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the pro-

gram or activity on the grounds of race, color, or national origin.

(c) Employment practices:

(1) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by the Department which have as a primary objective the providing of employment include those set forth in Appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

§ 21.7 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities op-

erated in connection therewith. The Secretary shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in Appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application: (1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

§ 21.9 Compliance information.

(a) *Cooperation and assistance.* The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

(c) *Access to sources of information.* Each recipient shall permit access by the Secretary during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

§ 21.11 Conduct of investigations.

(a) *Periodic compliance reviews.* The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

(c) *Investigations.* The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 21.13.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the Secretary will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

§ 21.13 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to: (1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any

rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 21.7.* If an applicant fails or refuses to furnish an assurance required under § 21.7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to § 21.21, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until—

(1) The Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Secretary pursuant to § 21.17(e); and

(4) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by this Department until—

(1) The Secretary has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 21.15 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 21.13(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either: (1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to

appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 21.13(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 21.17.

§ 21.17 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the Secretary shall review the initial decision and issue his own decision thereon in-

cluding the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Secretary.

(b) *Decisions on record or review by the Secretary.* Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 21.15, a decision shall be made by the Secretary on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Secretary.* Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying who it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section.

While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 21.19 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 21.21 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for a recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part may be considered to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder or (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Secretary shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 21.17), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of this Department.

§ 21.23 Definitions.

Unless the context requires otherwise, as used in this part—

(a) "Applicant" means a person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(b) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(c) "Federal financial assistance" includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as

one of its purposes the provision of assistance.

(d) "Primary recipient" means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(e) "Program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) "Recipient" may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) "Secretary" means the Secretary of Transportation or, except in § 21.17 (e), any person to whom he has delegated his authority in the matter concerned.

Appendix A—Activities To Which This Part Applies

1. Use of grants made in connection with Federal-aid highway systems (23 U.S.C. 101 et seq.).

2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 401 et seq.).

3. Use of grants in connection with the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391-1409, 1421-1425).

4. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the Coast Guard (14 U.S.C. 93 (n) and (o)).

5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).

6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and Puerto Rico (14 U.S.C. 148).

7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).

8. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821-832).

9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research (42 U.S.C. 1891).

10. Use of grants made in connection with the Federal-aid Airport Program (secs. 1-15 and 17-20 of the Federal Airport Act, 49 U.S.C. 1101-1114, 1116-1120).

11. Use of U.S. land acquired for public airports under—

a. Section 16 of the Federal Airport Act, 49 U.S.C. 1115; and

b. Surplus Property Act (sec. 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g), and sec. 3 of the Act of Oct. 1, 1949, 50 U.S.C. App. 1622b).

12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under sections 305, 311, and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1352, and 1354(a)).

13. Use of grants and loans made in connection with Urban Mass Transportation Capital Facilities Grant and Loan Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602).

14. Use of grants made in connection with Urban Mass Transportation Research and Demonstration Grant Program—Urban

Mass Transportation Act of 1964, as amended (49 U.S.C. 1605).

15. Use of grants made in connection with Urban Mass Transportation Technical Studies Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607a).

16. Use of grants made in connection with Urban Mass Transportation Managerial Training Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607b).

17. Use of grants made in connection with Urban Mass Transportation Grants for Research and Training Programs in Institutions of Higher Learning—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607c).

18. Use of grants made in connection with the High Speed Ground Transportation Act, as amended (49 U.S.C. 631-642).

Appendix B—Activities To Which This Part Applies When A Primary Objective Of The Federal Financial Assistance Is To Provide Employment

1. Appalachia Regional Development Act of 1965 (40 U.S.C. App. 1 et seq.).

Appendix C—Application of Part 21 To Certain Federal Financial Assistance Of The Department Of Transportation

Nondiscrimination on Federally Assisted Projects

(a) *Examples.* The following examples, without being exhaustive, illustrate the application of the nondiscrimination provisions of this part on projects receiving Federal financial assistance under the programs of certain Department of Transportation operating administrations:

(1) *Federal Aviation Administration.* (i) The airport sponsor or any of his lessees, concessionaires, or contractors may not differentiate between members of the public because of race, color, or national origin in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tiedown areas, restaurant facilities, restrooms, or facilities operated under the compatible land use concept.

(ii) The airport sponsor and any of his lessees, concessionaires, or contractors must offer to all members of the public the same degree and type of service without regard to race, color, or national origin. This rule applies to fixed base operators, restaurants, snack bars, gift shops, ticket counters, baggage handlers, car rental agencies, limousines and taxis franchised by the airport sponsor, insurance underwriters, and other businesses catering to the public at the airport.

(iii) An aircraft operator may not be required to park his aircraft at a location that is less protected, or less accessible from the terminal facilities, than locations offered to others, because of his race, color, or national origin.

(iv) The pilot of an aircraft may not be required to help more extensively in fueling operations, and may not be offered less incidental service (such as windshield wiping), than other pilots, because of his race, color, or national origin.

(v) No pilot or crewmember eligible for access to a pilot's lounge or to unofficial communication facilities such as a UNICOM frequency may be restricted in that access because of his race, color, or national origin.

(vi) Access to facilities maintained at the airport by air carriers or commercial operators for holders of first-class transportation tickets or frequent users of the carrier's or operator's services may not be restricted on the basis of race, color, or national origin.

(vii) Passengers and crewmembers seeking ground transportation from the airport may not be assigned to different vehicles, or delayed or embarrassed in assignment to vehicles, by the airport sponsor or his lessees, concessionaires, or contractors, because of race, color, or national origin.

(viii) Where there are two or more sites having equal potential to serve the aeronautical needs of the area, the airport sponsor shall select the site least likely to adversely affect existing communities. Such site selection shall not be made on the basis of race, color, or national origin.

(ix) Employment at obligated airports, including employment by tenants and concessionaires shall be available to all regardless of race, creed, color, sex, or national origin. The sponsor shall coordinate his airport plan with his local transit authority and the Urban Mass Transportation Administration to assure public transportation, convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population.

(x) The sponsor shall assure that the minority business community in his area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.

(2) *Federal Highway Administration.* (i) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for, or incidental to, construction, planning, research, highway safety, engineering, property management, and fee con-

tracts and other commitments with person for services and expenses incidental to the acquisition of right-of-way.

(ii) The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.

(iii) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects, including those who supply materials and lease equipment.

(iv) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) *Urban Mass Transportation Administration.* (i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency or service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

(b) *Obligations of the airport operator—*(1) *Tenants, contractors, and concessionaires.* Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) *Notification of beneficiaries.* The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) *Reports.* Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[35 FR 10080, June 18, 1970, as amended by Amdt. 21-1, 38 FR 5875, Mar. 5, 1973; Amdt. 21-3, 40 FR 14318, Mar. 31, 1975]

PART 23—PARTICIPATION BY MINORITY BUSINESS ENTERPRISE IN DEPARTMENT OF TRANSPORTATION PROGRAMS

Subpart A—General

Sec.

23.1 Purpose.
23.3 Applicability.
23.5 Definitions.
23.7 Discrimination prohibited.

Subpart B—[Reserved]

Subpart C—Department of Transportation Financial Assistance Programs

Sec.
23.41 General.
23.43 General Requirements for Recipients.
23.45 Required MBE Program Components.
23.47 Counting MBE Participation toward Meeting MBE Goals.
23.49 Maintenance of Records and Reports.
23.51 Certification of the Eligibility of Minority Business Enterprises.
23.53 Eligibility Standards.
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Subpart D—[Reserved]

Subpart E—Compliance and Enforcement

23.71 [Reserved]
23.73 Complaints.
23.75 Compliance Reviews.
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23.79 [Reserved]
23.81 Conciliation Procedures for Financial Assistance Programs.
23.83 Enforcement Proceedings for Financial Assistance Programs.
23.85 Emergency Enforcement Procedure.
23.87 Willful Provison of Incorrect Information.

SCHEDULE A—INFORMATION FOR DETERMINING MINORITY BUSINESS ENTERPRISE ELIGIBILITY.

SCHEDULE B—INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY.

AUTHORITY: Sec. 905 of the Railroad Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); sec. 30 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1730); sec. 19 of the Urban Mass Transportation Act 1964, as amended (Pub. L. 95-599); Title 23 of the U.S. Code (relating to highways and highway safety); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); The Federal Property and Administrative Services Act of 1949 (49 U.S.C. 471 et seq.); Executive Order 11625; Executive Order 12138, unless otherwise noted.

SOURCE: 45 FR 21184, Mar. 31, 1980, unless otherwise noted.

Subpart A—General

§ 23.1 Purpose.

(a) The purpose of this part is to carry out the Department of Transportation's policy of supporting the fullest possible participation of firms owned and controlled by minorities and women, (MBEs) in Department of Transportation programs. This includes assisting MBEs throughout the life of contracts in which they participate.

(b) This part implements in part section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); section 30 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1730); section 19 of the Urban Mass Transportation Act of 1964, as amended (Pub. L. 95-599); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); and Title 23 of the U.S. Code (relating to highways and highway safety). This regulation supersedes all DOT regulations issued previously under these authorities, insofar as such regulations affect minority business enterprise matters in DOT financial assistance programs.

§ 23.2 Applicability.

This part applies to any DOT program through which funds are made available to members of the public for accomplishing DOT's purposes. Contracts and subcontracts which are to be performed entirely outside the United States, its possessions, Puerto Rico, and the North Mariana Islands, are exempted from this part.

§ 23.5 Definitions.

"Affirmative action" means taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve minority business enterprises fully in contracts and programs funded by the Department.

"Applicant" means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for DOT financial assistance; and "application" means such an application, request, or plan.

"Compliance" means the condition existing when a recipient or contractor

has met and implemented the requirements of this part.

"Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this part, a lease is a contract.

"Contractor" means one who participates, through a contract or subcontract, in any program covered by this part, and includes lessees.

"Department" or "DOT" means the Department of Transportation, including its operating elements.

"DOT-assisted contract" means any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between a recipient and a lessee.

"DOT financial assistance" means financial aid provided by the Department or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

"Departmental element" means the following parts of DOT:

(a) The Office of the Secretary (OST);

(b) The Federal Aviation Administration (FAA);

(c) The United States Coast Guard (USCG);

(d) The Federal Highway Administration (FHWA);

(e) The Federal Railroad Administration (FRA);

(f) The National Highway Traffic Safety Administration (NHTSA);

(g) The Urban Mass Transportation Administration (UMTA);

(h) The St. Lawrence Seaway Development Corporation (SLSDC); and

(i) The Research and Special Programs Administration (RSPA).

"Joint venture" means an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.

"Lessee" means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race);

(c) Asian American (a person having origins in any of the original peoples of the Far East. Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(d) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)

(e) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

"Minority business enterprise" or "MBE" means a small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

(a) Which is at least 51 per centum owned by one or more minorities or women or, in the case of a publicly owned business, at least 51 per centum

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of the stock of which is owned by one or more minorities or women; and

(b) Whose management and daily business operations are controlled by one or more such individuals.

"MBE coordinator" means the official designated by the head of the Department element to have overall responsibility for promotion of minority business enterprise in his/her Departmental element.

"Noncompliance" means the condition existing when a recipient or contractor has failed to implement the requirements of this part.

"Primary recipient" is a recipient who receives DOT financial assistance and passes some or all of this assistance on to another recipient.

"Program" means any undertaking by a recipient to use DOT financial assistance, and includes the entire activity any part of which receives DOT financial assistance.

"Recipient" means any entity, public or private, to whom DOT financial assistance is extended, directly or through another recipient for any program.

"Secretary" means the Secretary of transportation or any person whom he/she has designated to act for him/her.

"Set-aside" means a technique which limits consideration of bids or proposals to those submitted by MBEs.

§ 23.7 Discrimination prohibited.

No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this Part, on the grounds of race, color, national origin, or sex.

Subpart B—[Reserved]

Subpart C—Department of Transportation Financial Assistance Programs

§ 23.41 General.

(a) *Responsibilities of Applicants and Recipients.*

(1) All applicants and recipients shall follow the requirements of § 23.43.

(2) Applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing the elements set forth in § 23.45(e) through (i). This program shall be submitted for approval to the DOT element concerned with the application for financial assistance or project approval.

(i) Applicants for funds in excess of $250,000 exclusive of transit vehicle purchases under sections 3, 5, and 17 of the Urban Mass Transportation Act of 1964, as amended, and Federal Aid Urban Systems;

(ii) Applicants for funds in excess of $100,000 under sections 6 and 8 of the Urban Mass Transportation Act of 1964, as amended;

(iii) Applicants for Section 402 program funds of the National Highway Traffic Safety Administration;

(iv) Applicants for funds in excess of $250,000 awarded by the Federal Aviation Administration to general aviation airports;

(v) Applicants for funds in excess of $400,000 awarded by the Federal Aviation Administration to non-hub airports; and

(vi) Applicants for planning funds in excess of $75,000 awarded by the Federal Aviation Administration.

(vii) Licensees or applicants for a license under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*).

(3) All applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing all the elements set forth in § 23.45. The program shall be submitted for approval to the DOT element concerned with the application for assistance or project approval.

(i) Applicants for Federal-aid highway program funds;

(ii) Applicants for funds in excess of $500,000 exclusive of transit vehicle purchases under sections 3, 5, and 17 of the Urban Mass Transportation Act of 1964, as amended, and Federal Aid Urban Systems;

(iii) Applicants for funds in excess of $200,000 under sections 6 and 8 of the Urban Mass Transportation Act of 1964, as amended;

(iv) Applicants for funds in excess of $500,000 awarded by the Federal Avi-

ation Administration to large, medium and small hub airports; and

(v) Applicants for financial assistance programs, including loan guarantees, by the Federal Railroad Administration and the United States Railway Association.

(b) *Approval Requirement.* Applications and funding agreements are signed and authorizations to proceed are approved only after the applicant's MBE program has been approved by the Departmental element. This requirement applies to applications, authorizations to proceed requested by Federal-aid highway program recipients, and requests for draw downs from the U.S. Railway Association submitted 90 days or more following the effective date of this part.

(c) *Effect of agreement.* The MBE program prepared by the applicant and the commitment made by the applicant to carry out the MBE program is incorporated into and becomes part of this agreement and subsequent financial assistance agreements. The agreement between the Department and the recipient shall contractually bind the recipient to the commitments made in the MBE program, as approved by the Department. Failure to keep these commitments shall be deemed noncompliance with this part. Once submitted and approved, an MBE program is applicable to all DOT-assisted contracts solicited and let by the applicant after the approval date of the MBE program regardless of the approval date of the grant or project under which the contracts are let.

(d) *Other MBE Programs.* (1) Applicants meeting the criteria set forth in paragraphs (a)(2) and (3) of this section who have formulated MBE programs under previous requirements of DOT or other agencies shall revise these programs to conform to the requirements of this part prior to the approval of their next application.

(2) An MBE program approved by one Departmental element is acceptable to all Departmental elements. Applicants having an approved MBE program are not required to resubmit the program or to produce a new program for future applications, as long as all requirements for approval continue to be met and implementation of the program is achieving compliance. The Departmental element reassesses its approval of the MBE program of continuing recipients at least annually.

(e) *Transit Vehicle Manufacturers.* Transit vehicle manufacturers who wish to bid on UMTA-assisted transit vehicle procurement contracts shall have a UMTA-approved MBE program. Each UMTA recipient shall require these manufacturers to certify that they have such a program as a condition for bidding on UMTA-assisted contracts.

(f) *Exemptions.* The head of the Departmental element may, under appropriate circumstances, and with the concurrence of the Secretary, grant deviations or exemptions from this subpart. A request for deviation or exemption from this subpart shall be in writing and shall include a showing as to how the particular situation is exceptional and how the modified program complies substantially with this part. If the applicant asserts that State or local law prohibits it from including a particular provision in its program, the applicant shall provide copies of all legal citations supporting the claim.

§ 23.43 General requirements for recipients.

(a) Each recipient shall agree to abide by the statements in paragraphs (a)(1) and (2) of this section. These statements shall be included in the recipient's DOT financial assistance agreement and in all subsequent agreements between the recipient and any subrecipient and in all subsequent DOT-assisted contracts between recipients or subrecipients and any contractor.

(1) *"Policy.* It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently the MBE requirements of 49 CFR Part 23 apply to this agreement."

(2) *"MBE Obligation.* (i) The recipient or its contractor agrees to ensure

that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."

(b) Each DOT financial assistance agreement shall include the following: "If as a condition of assistance the recipient has submitted and the Department has approved a minority business enterprise affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program the Department shall impose such sanctions as noted in 49 CFR Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future DOT financial assistance."

(c) The recipient shall advise each subrecipient, contractor, or subcontractor that failure to carry out the requirements set forth in § 23.43(a) shall constitute a breach of contract and, after the notification of the Department, may result in termination of the agreement or contract by the recipient or such remedy as the recipient deems appropriate.

(d) Recipients shall take action concerning lessees as follows:

(1) Recipients shall not exclude MBEs from participation in business opportunities by entering into long-term, exclusive agreements with non-MBEs for the operation of major transportation-related activities or major activities for the provision of goods and services to the facility or to the public on the facility.

(2) Recipients required to submit affirmative action programs under § 23.41 (a)(2) or (a)(3) that have business opportunities for lessees shall submit to the Department for approval with their programs overall goals for the participation as lessees of firms owned and controlled by minorities and firms owned and controlled by women. These goals shall be for a specified period of time and shall be based on the factors listed in § 23.45(g)(5). Recipients shall review these goals at least annually, and whenever the goals expire. The review shall analyze projected versus actual MBE participation during the period covered by the review and any changes in factual circumstances affecting the selection of goals. Following each review, the recipient shall submit new overall goals to the Department for approval. Recipients that fail to meet their goals for MBE lessees shall demonstrate to the Department in writing that they made reasonable efforts to meet the goals.

(3) Except as provided in this section, recipients are not required to include lessees in their affirmative action programs. Lessees themselves are not subject to the requirements of this Part, except for the obligation of § 23.7 to avoid discrimination against MBEs.

§ 23.45 Required MBE program components.

(a) *A policy statement, expressing a commitment to use MBEs in all aspects of contracting to the maximum extent feasible.* (1) The applicant's policymaking body (Board, Council, etc.) shall issue a policy statement, signed by the chairperson, which expresses its commitment to the program, outlines the various levels of responsibility and states the objectives of the program. The policy statement shall be circulated throughout the applicant's organization and to minority, female, and nonminority community and business organizations.

(b) *The designation of liaison officer, as well as such support staff as*

may be necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the liaison officer and support staff. (1) The Chief Executive Officer of the recipient shall designate an MBE liaison officer and adequate staff to administer the MBE program. The MBE liaison officer shall report directly to the Chief Executive Officer.

(2) The MBE liaison officer shall be responsible for developing, managing, and implementing the MBE program on a day-to-day basis; for carrying out technical assistance activities for MBEs; and for disseminating information on available business opportunities so that MBEs are provided an equitable opportunity to bid on the applicant's contracts.

(c) *Procedures to ensure that MBEs have an equitable opportunity to compete for contracts and subcontracts.* The recipient shall develop and use affirmative action techniques to facilitate MBE participation in contracting activities. These techniques include:

(1) Arranging solicitations, time for the presentation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation MBEs.

(2) Providing assistance to MBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

(3) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) *Opportunities for the use of banks owned and controlled by minorities or women.* (1) The recipient shall thoroughly investigate the full extent of services offered by banks owned and controlled by minorities or women in its community and make the greatest feasible use of these banks.

(2) Recipients shall also encourage prime contractors to use the services of banks owned and controlled by minorities or women.

(e) *MBE directory.* (1) The recipient shall have available a directory or source list to facilitate identifying MBEs with capabilities relevant to general contracting requirements and to particular solicitations. The recipient shall make the directory available to bidders and proposers in their efforts to meet the MBE requirements. It shall specify which firms the Department, recipient, or the Small Business Administration has determined to be eligible MBEs in accordance with procedures set forth in this subpart.

(f) *Procedures to ascertain the eligibility of MBEs and joint ventures involving MBEs.* (1) To ensure that its MBE program benefits only firms owned and controlled by minorities or women, the recipient shall certify the eligibility of MBEs and joint ventures involving MBEs that are named by the competitors in accordance with this subpart. Recipients may, at their own discretion, accept certifications made by other DOT recipients.

(2) Recipients shall require their prime contractors to make good faith efforts to replace an MBE subcontractor that is unable to perform successfully with another MBE. The recipient shall approve all substitutions of subcontractors before bid opening and during contract performance, in order to ensure that the substitute firms are eligible MBEs.

(g) *Percentage goals for the dollar value of work to be awarded to MBEs.* (1) Once the recipient has reviewed proposed contracting to identify those contracting activities which have the greatest potential for MBE participation, the recipient shall set goals that are practical and related to the potential availability of MBEs in desired areas of expertise.

(2) The applicant/recipient shall establish two types of MBE goals:

(i) Overall goals for its entire MBE program, for a specified period of time (e.g. one year), or for a specific project, (e.g. the construction of a facility); and

(ii) Contract goals on each specific prime contract with subcontracting possibilities, which the bidder or proposer must meet or exceed or demonstrate that it could not meet despite its best efforts.

(3)(i) Recipients shall submit their overall goals and a description of the methodology used in establishing them with their MBE program. When

the overall goals expire, new overall goals shall be set and submitted to the Department for approval. Contract goals need not be submitted in the applicant's MBE program, but the program shall contain a description of the methodology to be used in establishing them. Contract goals may require approval by the Department prior to contract solicitation.

(ii) At the time the recipient submits its overall goals to the Department for approval, the recipient shall publish a notice announcing these goals, informing the public that the goals and a description of how they were selected are available for inspection during normal business hours at the principal office of the recipient for 30 days following the date of the notice, and informing the public that the Department and the recipient will accept comments on the goals for 45 days from the date of the notice. The notice shall include addresses to which comments may be sent, and shall be published in general circulation media and available minority-focus media and trade association publications, and shall state that the comments are for informational purposes only.

(4) Recipients shall set separate overall and contract goals for firms owned and controlled by minorities and firms owned and controlled by women.

(5) The applicant shall consider the following factors in setting overall goals:

(i) Overall goals shall be based on projection of the number and types of contracts to be awarded by the applicant and a projection of the number and types of MBEs likely to be available to compete for contracts from the recipient over the period during which the goals will be in effect.

(ii) Overall goals shall also be based on past results of the applicant's/recipient's efforts to contract with MBEs and the reasons for the high or low level of those results.

(6) The applicant/recipient shall review the overall goals at least annually. The review process shall analyze projected versus actual MBE participation during the previous year. The necessary revisions shall be made based on the analysis and submitted to the Department for approval.

(7) Goals shall be set for specific contracts based on the known availability of qualified MBEs.

(8) Recipients and contractors shall, at a minimum, seek MBEs in the same geographic area in which they seek contractors or subcontractors generally for a given solicitation. If the recipient or contractor cannot meet the goals using MBEs from this geographic area, the recipient or contractor, as part of its efforts to meet the goal, shall expand its search to a reasonable wider geographic area.

(h) *A means to ensure that competitors make good faith efforts to meet MBE contract goals:*

(1) For all contracts for which contract goals have been established, the recipient shall, in the solicitation, inform competitors that the apparent successful competitor will be required to submit MBE participation information to the recipient and that the award of the contract will be conditioned upon satisfaction of the requirements established by the recipient pursuant to this subsection.

(i) The apparent successful competitor's submission shall include the following information:

(A) The names and addresses of MBE firms that will participate in the contract;

(B) A description of the work each named MBE firm will perform;

(C) The dollar amount of participation by each named MBE firm.

(ii) The recipient may select the time at which it requires MBE information to be submitted. *Provided,* that the time of submission shall be before the recipient commits itself to the performance of the contract by the apparent successful competitor.

(2) If the MBE participation submitted in response to paragraph (h)(1) of this section does not meet the MBE contract goals, the apparent successful competitor shall satisfy the recipient that the competitor has made good faith efforts to meet the goals.

(i) The recipient may prescribe other requirements of equal or greater effectiveness in lieu of good faith efforts. Any recipient choosing alternative requirements shall inform the DOT

office concerned by letter of the content of the requirements it has prescribed within 30 days of the effective date of this subsection. The recipient may put these alternative requirements into effect immediately and prior DOT approval of alternative requirements is not necessary.

(ii) If the Department determines that the alternative requirements are not as or more effective than the good faith efforts provisions of this subsection, the Department may require the recipient to use the good faith efforts requirements of this subsection instead of the requirements it has prescribed.

(3) Meeting MBE contract goals, making good faith efforts as provided in paragraph (h)(2) of this section, or meeting requirements established by recipients in lieu of good faith efforts, is a condition of receiving a DOT-assisted contract for which contract goals have been established.

(i) [Reserved]

(j) *A description of the methods by which the recipient will require subrecipients, contractors, and subcontractors to comply with applicable MBE requirements.* (1) The recipient shall include in its MBE program a description and the specific language of any preconditions to subgrants or contracts pertaining to the use of MBEs, including subcontracting programs, it awards with DOT funds in addition to those required by this section. It shall specify on what size and/or type of contracts and subgrants it includes such preconditions. The description shall contain a summary of the ways the recipient provides help to its subrecipients, contractors, and subcontractors in drafting and implementing their programs for using MBEs. The description shall also include the means by which the recipient enforces the requirements placed on subrecipients, contractors and subcontractors.

(2) Any MBE subcontracting programs required by the recipient in addition to those required by this section shall be submitted to the recipient by the apparent successful bidder/proposer. The bidders/proposers shall be advised in the solicitation that failure to submit the additional MBE subcontracting program shall make the bidder/proposer ineligible for award.

(k) *Procedures by which the applicant/recipient will implement MBE set-asides.* Where not prohibited by state or local law and determined by the recipient to be necessary to meet MBE goals, procedures to implement MBE set-asides shall be established. MBE set-asides shall be used only in cases where at least three MBEs with capabilities consistent with contract requirements exist so as to permit competition.

Appendix A—Guidance Concerning Good Faith Efforts

To determine whether a competitor that has failed to meet MBE contract goals may receive the contract, the recipient must decide whether the efforts the competitor made to obtain MBE participation were "good faith efforts" to meet the goals. Efforts that are merely *pro forma* are not good faith efforts to meet the goals. Efforts to obtain MBE participation are not good faith efforts to meet the goals, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of MBE participation sufficient to meet the goals. In order to award a contract to a competitor that has failed to meet MBE contract goals, the recipient must determine that the competitor's efforts were those that, given all relevant circumstances, a competitor actively and aggressively seeking to meet the goals would make.

To assist recipients in making the required judgment, the Department has prepared a list of the kinds of efforts that contractors may make in obtaining MBE participation. It is not intended to be a mandatory checklist; the Department does not require recipients to insist that a contractor do any one, or any particular combination, of the things on the list. Nor is the list intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a contractor has made good faith efforts, it will usually be important for a recipient to look not only at the different kinds of efforts that the contractor has made, but also the quantity and intensity of these efforts.

The Department offers the following list of kinds of efforts that recipients may consider:

(1) Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform

MBEs of contracting and subcontracting opportunities;

(2) Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;

(3) Whether the contractor provided written notice to a reasonable number of specific MBEs that their interest in the contract was being solicited, in sufficient time to allow the MBEs to participate effectively;

(4) Whether the contractor followed up initial solicitations of interest by contacting MBEs to determine with certainty whether the MBEs were interested;

(5) Whether the contractor selected portions of the work to be performed by MBEs in order to increase the likelihood of meeting the MBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation);

(6) Whether the contractor provided interested MBEs with adequate information about the plans, specifications and requirements of the contract;

(7) Whether the contractor negotiated in good faith with interested MBEs, not rejecting MBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;

(8) Whether the contractor made efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and

(9) Whether the contractor effectively used the services of available minority community organizations; minority contractors' groups; local, state and Federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of MBEs.

(Title VI of the Civil Rights Act of 1964; sec. 30 of the Airport and Airway Development Act of 1970, as amended; sec. 905 of the Railroad Revitalization and Regulatory Reform Act of 1976; sec. 19 of the Urban Mass Transportation Act of 1964, as amended; 23 U.S.C. 324; Executive Order 11625; Executive Order 12138)

[45 FR 21184, Mar. 31, 1980, as amended at 46 FR 23461, Apr. 27, 1981]

§ 23.47 Counting MBE participation toward meeting MBE goals.

MBE participation shall be counted toward meeting MBE goals set in accordance with this subpart as follows:

(a) Once a firm is determined to be an eligible MBE in accordance with this subpart, the total dollar value of the contract awarded to the MBE is counted toward the applicable MBE goals.

(b) The total dollar value of a contract to an MBE owned and controlled by both minority males and non-minority females is counted toward the goals for minorities and women, respectively, in proportion to the percentage of ownership and control of each group in the business. The total dollar value of a contract with an MBE owned and controlled by minority women is counted toward either the minority goal or the goal for women, but not to both. The contractor or recipient employing the firm may choose the goal to which the contract value is applied.

(c) A recipient or contractor may count toward its MBE goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of this subpart equal to the percentage of the ownership and controls of the MBE partner in the joint venture.

(d)(1) A recipient or contractor may count toward its MBE goals only expenditures to MBEs that perform a commercially useful function in the work of a contract. An MBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an MBE is performing a commercially useful function, the recipient or contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

(2) Consistent with normal industry practices, an MBE may enter into subcontracts. If an MBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MBE shall be presumed not to be performing a commercially useful function. The MBE may present evidence to rebut this presumption to the recipient. The recipient's decision on the rebuttal of this presumption is subject to review by the Department.

(e) A recipient or contractor may count toward its MBE goals expenditures for materials and supplies obtained from MBE suppliers and manu-

facturers, provided that the MBEs assume the actual and contractual responsibility for the provision of the materials and supplies.

(1) The recipient or contractor may count its entire expenditure to an MBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

(2) The recipient may count 20 percent of its expenditures to MBE suppliers that are not manufacturers, provided that the MBE supplier performs a commercially useful function in the supply process.

§ 23.49 Maintenance of records and reports.

(a) In order to monitor the progress of its MBE program the applicant/recipient shall develop a recordkeeping system which will identify and assess MBE contract awards, prime contractors' progress in achieving MBE subcontract goals, and other MBE affirmative action efforts.

(b) Specifically, the applicant/recipient shall maintain records showing:

(1) Procedures which have been adopted to comply with the requirements of this part.

(2) Awards to MBEs. These awards shall be measured against projected MBE awards and/or MBE goals. To assist in this effort, the applicant shall obtain regular reports from prime contractors on their progress in meeting contractual MBE obligations.

(3) Specific efforts to identify and award contracts to MBEs.

(c) Records shall be available upon the request of an authorized officer or employee of the government.

(d)(1) The recipient shall submit reports conforming in frequency and format to existing contract reporting requirements of the applicable Departmental element. Where no such contract reporting requirements exist, MBE reports shall be submitted quarterly.

(2) These reports shall include as a minimum:

(i) The number of contracts awarded to MBEs;

(ii) A description of the general categories of contracts awarded to MBEs;

(iii) The dollar value of contracts awarded to MBEs;

(iv) The percentage of the dollar value of all contracts awarded during this period which were awarded to MBEs; and

(v) An indication of whether and the extent of which the percentage met or exceeded the goal specified in the application.

(3) The records and reports required by this section shall provide information relating to firms owned and controlled by minorities separately from information relating to firms owned and controlled by women. If the records and reports include any section 8(a) contractors that are not minorities or women, information concerning these contractors shall also be recorded and reported separately.

§ 23.51 Certification of the eligibility of minority business enterprises.

(a) To ensure that this part benefits only MBEs which are owned and controlled in both form and substance by one or more minorities or women, DOT recipients shall use Schedules A and B (reproduced at the end of this Part) to certify firms who wish to participate as MBEs in DOT under this part.

(b) Except as provided in paragraph (c) of this section, each business, including the MBE partner in a joint venture, wishing to participate as a MBE under this part in a DOT-assisted contract shall complete and submit Schedue A. Each entity wishing to participate as a joint venture MBE under this part in DOT-assisted contracts shall in addition complete and submit Schedule B. The schedule(s) shall be signed and notarized by the authorized representative of the business entity. A business seeking certification as an MBE shall submit the required schedules with its bid or proposal for transmission to the contracting agency involved.

(c) Under the following circumstances, a business seeking to participate as an MBE under this subpart need not submit schedule A or B:

(1) If a DOT recipient has established a different certification process that DOT has determined to be as or

more effective than the process provided for by this section. Where such a process exists, potential MBE contractors shall submit the information required by the recipient's process.

(2) If the potential MBE contractor states in writing that it has submitted the same information to or has been certified by the DOT recipient involved, any DOT element, or another Federal agency that uses essentially the same definition and ownership and control criteria as DOT. The potential MBE contractor shall obtain the information and certification (if any) from the other agency and submit it to the recipient or cause the other agency to submit it. The recipient may rely upon such a certification. Where another agency has collected information but not made a determination concerning eligibility, the DOT recipient shall make its own determination based on the information it has obtained from the other agency.

(3) If the potential MBE contractor has been determined by the Small Business Administration to be owned and controlled by socially and economically disadvantaged individuals under section 8(a) of the Small Business Act, as amended.

§ 23.53 Eligibility standards.

(a) The following standards shall be used by recipients in determining whether a firm is owned and controlled by one or more minorities or women is and shall therefore be eligible to be certified as an MBE. Businesses aggrieved by the determination may appeal in accordance with procedures set forth in § 23.55.

(1) Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community. However, the recipient is not required to accept this claim if it determines the claim to be invalid.

(2) An eligible minority business enterprise under this part shall be an independent business. The ownership and control by minorities or women shall be real, substantial, and continuing and shall go beyond the *pro forma* ownership of the firm as reflected in its ownership documents. The minority or women owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by a examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an MBE. In determining whether a potential MBE is an independent business, DOT recipients shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing, and other relationships with nonminority firms vary from industry practice.

(3) The minority or women owners shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the minority or women owners. There shall be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners, without the cooperation or vote of any owner who is not a minority or woman, from making a business decision of the firm.

(4) If the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities or women and shall not be considered an MBE within the meaning of this part. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purposes of this part, be considered as controlling the business.

(5) All securities which constitute ownership and/or control of a corporation for purposes of establishing it as an MBE under this part shall be held

directly by minorities or women. No securities held in trust, or by any guardian for a minor, shall be considered as held by minority or women in determining the ownership or control of a corporation.

(6) The contributions of capital or expertise by the minority or women owners to acquire their interests in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not socially and economically disadvantaged, or the mere participation as an employee, rather than as a manager.

(b) In addition to the above standards, DOT recipients shall give special consideration to the following circumstances in determining eligibility under this part.

(1) Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

(2) A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section.

(3) Any relationship between an MBE and a business which is not an MBE which has an interest in the MBE is carefully reviewed to determine if the interest of the non-MBE conflicts with the ownership and control requirements of this section.

(c) A joint venture is eligible under this part if the MBE partner of the joint venture meets the standards for an eligible MBE set forth above and the MBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks, and profits of the joint venture.

(d) A joint venture is eligible to compete in an MBE set-aside under this part if the MBE partner of the joint venture meets the standards of an eligible MBE set forth above, and the MBE partner's share in the ownership, control, and management responsibilities, risks, and profits of the joint venture is at least 51 percent and the MBE partner is responsible for a clearly defined portion of the work to be performed.

(e) A business wishing to be certified as an MBE or joint venture MBE by a DOT recipient shall cooperate with the recipient in supplying additional information which may be requested in order to make a determination.

(f) Once certified, an MBE shall update its submission annually by submitting a new Schedule A or certifying that the Schedule A on file is still accurate. At any time there is a change in ownership or control of the firm, the MBE shall submit a new schedule A.

(g) Except as provided in § 23.55, the denial of a certification by the Department or a recipient shall be final, for that contract and other contracts being let by the recipient at the time of the denial of certification. MBEs and joint ventures denied certification may correct deficiencies in their ownership and control and apply for certification only for future contracts.

(h) Recipients shall safeguard from disclosure to unauthorized persons information that reasonably may be regarded as confidential business information, consistent with Federal, state and local law.

§ 23.55 Appeals of denials of certification as an MBE.

(a) *Filing.* Any firm which believes that it has been wrongly denied certification as an MBE or joint venture under §§ 23.51 and 23.53 by the Department or a recipient of DOT financial assistance may file an appeal in writing, signed and dated, with the Department. The appeal shall be filed no later than 180 days after the date of denial of certification. The Secretary may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reasons for so doing. Third parties who have reason to believe that another firm has been wrongly denied or granted certification as an MBE or joint venture may advise the Secre-

tary. This information is not considered an appeal pursuant to this section.

(b) *Decision to Investigate.* The Secretary ensures that a prompt investigation is made pursuant to prescribed DOT Title VI investigation procedures.

(c) *Status of Certification During the Investigation.* The Secretary may at his/her discretion, deny the MBE or joint venture in question eligibility to participate as an MBE DOT-assisted contracts let during the pendancy of the investigation, after providing the MBE or joint venture in question an opportunity to show cause by written statement to the Secretary why this should not occur.

(d) *Cooperation in Investigation.* All parties shall cooperate fully with the investigation. Failure or refusal to furnish requested information or other failure to cooperate is a violation of this part.

(e) *Determinations.* The Secretary makes one of the following determinations and informs the MBE or joint venture in writing of the reasons for the determination:

(1) The MBE or joint venture is certified; or

(2) The MBE or joint venture is not eligible to be certified and is denied eligibility to participate as an MBE in any direct or DOT-assisted contract until a new application for certification is approved by the recipient.

Subpart D—[Reserved]

Subpart E—Compliance and Enforcement

§ 23.71 [Reserved]

§ 23.73 Complaints.

(a) *Filing.* Any person who believes himself or herself, another person, or any specific class of individuals to be subjected to a violation of this part may file a complaint in writing, signed and dated, with the Department. The complaint shall be filed no later than 180 days after the date of an alleged violation or the dates on which a continuing course of conduct in violation of this part was disclosed. The Secretary may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

(b) *Investigations.* The Secretary ensures that a prompt investigation is made pursuant to prescribed DOT Title VI investigation procedures.

(c) *Cooperation in Investigation.* The respondent to the complaint shall cooperate fully with the investigation. Failure or refusal by the respondent to furnish requested information or other failure to cooperate is a violation of this part.

(d) *Determinations.* Upon completion of the investigation, the Secretary informs the recipient or contractor and complainant of the results of the investigation in writing. If the investigation indicates a failure to comply with this part, the conciliation procedures of § 23.81 and, if necessary, the enforcement procedures of § 23.83 are followed.

(e) *Intimidation or Retaliation Acts Prohibited.* No recipient, contractor, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part, or because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential at their election during the conduct of any investigation, proceeding, or hearing under this part. But when such confidentiality is likely to hinder the investigation the complainant shall be advised for the purpose of waiving the privilege.

§ 23.75 Compliance reviews of recipients.

(a) *Desk Audit.* All compliance reviews conducted after financial assistance has been approved or contracts have been awarded begin with a desk audit. The desk audit is a review of all material and information concerning the recipient's MBE performance.

(b) *On-Site Review.* An on-site review includes interviews, visits to project or facility sites receiving DOT funds, and inspection of any statistical or documentary materials relevant to the recipient's performance which

were not available for review during the desk audit.

(c) *Cooperation.* The recipient shall cooperate fully with these reviews. Failure or refusal to furnish requested information or failure to cooperate is a violation of this part.

(d) *Determination.* As a result of its review of the recipient, the Departmental element civil rights staff makes one of the following determinations:

(1) The recipient is in compliance with its MBE obligations; or

(2) There is reasonable cause to believe that the recipient is not in compliance with its MBE obligations in certain specified respects. Proceedings shall be begun in accordance with § 23.81 and, if necessary, § 23.83.

§ 23.77 [Reserved]

§ 23.79 [Reserved]

§ 23.81 Conciliation procedures for financial assistance programs.

(a) *Reasonable Cause Notice.* Whenever the responsible office of civil rights makes a determination of reasonable cause to believe that a recipient is in noncompliance, a notice is sent promptly and in writing by registered mail, return receipt requested, describing the areas of noncompliance requiring the applicant or recipient to show cause within 30 days why enforcement proceedings or other appropriate action to ensure compliance should not be instituted and offering the recipient an opportunity to conciliate. The responsible office of civil rights shall pursue conciliation efforts for at least 30 days from the date of the reasonable cause notice.

(1) *Successful conciliation.* If a conciliation agreement is signed by the Departmental element's office of civil rights and recipient, it is approved or disapproved by the head of the Departmental element within 20 days of receiving it. If the head of the Departmental element disapproves the agreement, the reasons therefor are stated in writing. The head of the Departmental element may propose amendments to the agreement which are forwarded to the recipient, requesting the recipient's acceptance or rejection of the amended agreement within 20 days of receipt.

(2) *Unsuccessful conciliation.* If no agreement is signed within 120 days of the notice of reasonable cause enforcement proceedings set forth in § 23.83 begin. The head of the responsible office of civil rights, upon a written determination that an additional 30 days are needed to complete conciliation, may extend the conciliation period for 30 days. Subsequent extensions may be made upon such written determinations. The determinations shall include reasons for the extension and shall be provided to the complainant and respondent.

(b) *Effect of conciliation agreement.* If a conciliation agreement is approved, the existence of the determination of noncompliance does not act as a bar to the provision of financial assistance as long as the terms of the agreement are fulfilled. A compliance review is conducted by the Department element within nine months of the approval of an agreement.

§ 23.83 Enforcement proceedings for financial assistance programs.

(a) Whenever conciliation efforts pursuant to § 23.81 are unsuccessful, enforcement proceedings begin. These proceedings are conducted in accordance with the Department's procedures for enforcing Title VI (49 CFR Part 21).

(b) A finding of noncompliance and the imposition of any sanction pursuant to these proceedings is binding on all other Departmental elements. Sanctions are limited to the recipient with respect to whom the noncompliance finding has been made and to the particular program or activity, or part thereof, in which noncompliance has been found.

§ 23.85 Emergency enforcement procedure.

(a) *General.* Whenever the Secretary determines that the conciliation and enforcement proceedings set forth in §§ 23.81 and 23.83 will not result in the timely and adequate enforcement of the provisions of this Part, he/she initiates special enforcement procedures to obtain compliance.

(b) *Emergency Reasonable Cause Notice.* A notice is sent, registered mail, return receipt requested, describing the areas of alleged noncompliance, setting forth the reasons why the normal course of conciliation and enforcement pursuant to §§ 23.81 and 23.83 will not result in timely and adequate enforcement, and requiring the recipient to show cause, within a specified period of time, generally not to exceed 15 days, why appropriate action, described in the notice, to ensure compliance should not be taken. The notice states that the recipient must respond in writing or orally on the record before an official appointed by the Secretary or the proposed action will be taken.

(c) *Decision.* If the Secretary, after reviewing the recipient's oral or written response, determines that such action is necessary, he/she orders that all or any part of the contracting activities of the recipient affected by the recipient's alleged noncompliance be halted until the matter is resolved under §§ 23.81 or 23.83. The Secretary's action under this paragraph may not affect any contract already awarded. When the Secretary makes an order under this paragraph, resolution of the matter shall proceed on an expedited basis.

§ 23.87 Willful provision of incorrect information.

If, at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the General Counsel of the Department. He/she may initiate debarment procedures in accordance with 41 CFR 1-1.604 and 12-1.602 and/or refer the matter to the Department of Justice under 18 U.S.C. 1001, as he/she deems appropriate.

SCHEDULE A—INFORMATION FOR DETERMINING MINORITY BUSINESS ENTERPRISE ELIGIBILITY

1. Name of firm ———————————
2. Address of firm ———————————
3. Phone Number of firm ———————————
4. Indicate whether firm is sole proprietorship, partnership, joint venture, corporation or other business entity (please specify) ———————————
5. Nature of firm's business ———————————
6. Years firm has been in business ———
7. Ownership of firm: Identify those who own 5 percent or more of the firm's ownership. Columns e and f need be filled out only if the firm is less than 100 percent minority owned.

a—Name	b—Race	c—Sex	d—Years of ownership	e—Ownership percentage	f—Voting percentage

With firms less than 100 percent minority owned, list the contributions of money, equipment, real estate, or expertise of each of the owners.

8. Control of firm: (a) Identify by name, race, sex, and title in the firm those individuals (including owners and non-owners) who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:

(1) Financial decisions ———————————
(2) Management decisions, such as—
a. Estimating ———————————
b. Marketing and sales ———————————
c. Hiring and firing of management personnel ———————————
d. Purchases of major items or supplies —
(3) Supervision of field operations ———

9. For each of those listed in question 8, provide a *brief* summary of the person's experience and number of years with the firm, indicating the person's qualifications for the responsibilities given him or her.

10. Describe or attach a copy of any stock options or other ownership options that are outstanding, and any agreements between owners or between owners and third parties which restrict ownership or control of minority owners.

11. Identify any owner (see item 7) or management official (see item 8) of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Present business relationships include shared space, equipment, financing, or employees as well as both firms having some of the same owners.

12. What are the gross receipts of the firm for each of the last two years?

Year ending ———————————
$ ———————————
Year ending ———————————
$ ———————————

13. Name of bonding company, if any: ——
———————————

Bonding limit ———————————
Source of letters of credit, if any ———————

14. Are you authorized to do business in the state as well as locally, including all necessary business licenses?

15. Indicate if this firm or other firms with any of the same officers have previously received or been denied certification or participation as an MBE and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

AFFIDAVIT

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of ——— (name of firm) as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor or, if no prime, directly to the grantee current, complete and accurate information regarding actual work performed on the project, the payment therefor and any proposed changes, if any, of the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

NOTE: If, after filing this Schedule A and before the work of this firm is completed on the contract covered by this regulation, there is any significant change in the information submitted, you must inform the grantee of the change through the prime contractor or, if no prime contractor, inform the grantee directly.

Signature ———————————
Name ———————————
Title ———————————
Date ———————————

Corporate Seal (where appropriate).

Date ———————————
State of ———————————
County of ———————————

On this — day of ——, 19—, before me appeared (Name) ———, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) ——— to execute the affidavit and did so as his or her free act and deed.

[Seal]

Notary Public ———————————
Commission expires ———————————

SCHEDULE B—INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY

(This form need not be filled in if all joint venture firms are minority owned.)

1. Name of joint venture ———————
2. Address of joint venture ———————
3. Phone number of joint venture ———
4. Identify the firms which comprise the joint venture. (The MBE partner must complete Schedule A.) ———————
(a) Describe the role of the MBE firm in the joint venture. ———————

———————————————

(b) Describe very briefly the experience and business qualifications of each non-MBE joint venturer:———————

———————————————

5. Nature of the joint venture's business —

———————————————

6. Provide a copy of the joint venture agreement.

7. What is the claimed percentage of MBE ownership? ———————

8. Ownship of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.)

(a) Profit and loss sharing.

(b) Capital contributions, including equipment.

(c) Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:

(a) Financial decisions ———————
(b) Management decisions, such as:
(1) Estimating ———————
(2) Marketing and sales ———————
(3) Hiring and firing of management personnel ———————
(4) Purchasing of major items or supplies

———————————————

(c) Supervision of field operations

NOTE: If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

AFFIDAVIT

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the grantee current, complete and accurate information regarding actual joint venture work and the pay-

ment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

Name of Firm	Name of Firm
Signature	Signature
Name	Name
Title	Title
Date	Date"

Date ———————————
State of ———————————
County of ———————————

On this — day of ——, 19—, before me appeared (Name) ———, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) ——— to execute the affidavit and did so as his or her free act and deed.

Notary Public ———————————
Commission expires ———————————
[Seal]

Date ———————————
State of ———————————
County of ———————————

On this — day of ——, 19—, before me appeared (Name) ———, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) ——— to execute the affidavit and did so as his or her free act and deed.

Notary Public ———————————
Commission expires ———————————
[Seal]

PART 25—RELOCATION ASSISTANCE AND LAND ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

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AUTHORITY: Sec. 213, 84 Stat. 1900, 42 U.S.C. 4633.

SOURCE: Amdt. 25-1, 40 FR 41040, Sept. 4, 1975, unless otherwise noted.

Subpart A—General

§ 25.1 Purpose and policy.

(a) This part implements the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 which provides for the uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and Federally-assisted programs and establishes uniform and equitable land acquisition policies for Federal and Federally-assisted programs.

(b) In implementing the Act, it is the policy of the Department of Transportation to deal consistently and fairly

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with all persons whose property is taken for public projects and all persons who are displaced from their homes, businesses, or farms. The Department will not participate in a project which displaces individuals and families from their homes unless comparable replacement dwellings are available to them in advance of their displacement.

§ 25.3 Definitions.

As used in this part—

"Agency concerned" means the operating administration within the Department of Transportation or the State agency responsible for carrying out the project concerned, or the Office of the Secretary of Transportation in the case of a project being carried out by that office.

"Appropriate DOT official" means an official of the Department of Transportation to whom the Secretary of Transportation has delegated authority to carry out this part and includes any person to whom that official has redelegated that authority.

"Business" means a lawful activity, other than a farm operation, conducted primarily—

(1) For the purchase, sale, lease, or rental of personal and real property, and the manufacture, processing or marketing of products, commodities, or other personal property;

(2) For the sale of services to the public; or

(3) By a nonprofit organization.

"Dwelling" means the place of permanent or customary and usual residence of an individual or family, and includes:

(1) A single-family house;

(2) A single-family unit in a multifamily building;

(3) A unit of a condominium or cooperative housing project; or

(4) Any other residential unit.

"Economic rent" means the amount of rent a tenant or homeowner would have to pay for a dwelling comparable to the acquired dwelling in a similar area.

"Family" means two or more individuals who live together in a dwelling and are—

(1) Related by blood, marriage, adoption, or legal guardianship; or

(2) Determined to be jointly eligible for benefits under this part by the appropriate DOT official.

"Farm operation" means a lawful activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use.

"Federal agency" means a department, agency or instrumentality in the Executive Branch of Government (except the National Capital Housing Authority), any wholly-owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

"Federal financial assistance" means a grant, loan, or contribution by the United States, other than a Federal guarantee or insurance or an annual payment or capital loan to the District of Columbia.

"Federally-assisted" means assisted by a grant, loan or contribution by the United States, other than a Federal guarantee or insurance or an annual payment or capital loan to the District of Columbia.

"Homeowner" means an individual or family who owns and occupies a dwelling.

"Initiation of negotiations" means the date the agency concerned makes its first personal contact with the owner of real property, or his representative, to give him a written offer for the property to be acquired.

"Mortgage" means a lien commonly given to secure an advance on, or the unpaid purchase price of, real property under the laws of the State in which real property is located, together with any credit instruments secured thereby.

"Own" means holding any of the following interests in a dwelling, or a contract to purchase one of those interests:

(1) A fee title.

(2) A life estate.

(3) A 99-year lease.

(4) A lease with at least 50 years to run from the date of acquisition of the property.

(5) A proprietary interest in a cooperative housing project which includes the right to occupy a dwelling; or

(6) Any other interest which the appropriate DOT official determines to be a sufficient proprietary right.

"Person" includes a partnership, company, corporation, or association as well as an individual or family.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, the trust territories of the Pacific Islands, or a political subdivision of any of those jurisdictions.

"State agency" means a department, public body, agency or instrumentality of a State or of a political subdivision of a State, or any department, agency or instrumentality of two or more States or of two or more political subdivisions of a State or States, the National Capitol Housing Authority and the District of Columbia Redevelopment Land Agency.

"Tenant" means an individual or family who rents, or is temporarily in lawful possession of a dwelling, including a sleeping room.

§ 25.5 Applicability.

This part applies to projects which are part of a Federal or Federally-assisted program administered by the Department of Transportation and which, after January 1, 1971, cause the displacement of persons or the acquisition of real property, including acquisition by a State agency without Federal financial assistance.

§ 25.7 Delegations of authority.

(a) Except as provided in § 25.153, the functions, powers, and duties of the Secretary of Transportation with respect to the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" are delegated to—

(1) The Assistant Secretary for Administration with respect to programs administered directly by the Office of the Secretary; and

(2) The head of each of the following operating administrations with respect to programs administered by their respective organizations:

(i) U.S. Coast Guard.

(ii) Federal Aviation Administration.

(iii) Federal Highway Administration.

(iv) Federal Railroad Administration.

(v) Urban Mass Transportation Administration.

(vi) National Highway Traffic Safety Administration.

(vii) St. Lawrence Seaway Development Corporation.

(b) Each officer to whom authority is delegated by paragraph (a) of this section may redelegate and authorize successive redelegations of that authority within the organization under his jurisdiction.

§ 25.9 Regulations.

(a) Each officer to whom authority is delegated by § 25.7 may prepare, and submit to the Assistant Secretary for Environment, Safety and Consumer Affairs for approval, regulations that—

(1) Implement the requirements of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (84 Stat. 1894) and this part; and

(2) Prescribe additional procedures and requirements that are appropriate to the particular programs administered by the preparing officer's organization and are not inconsistent with the Act or this part.

(b) After the Assistant Secretary for Environment, Safety and Consumer Affairs approves the regulations, the preparing officer shall submit them to the FEDERAL REGISTER for publication.

(c) Regulations issued under this section are effective only after approval by the Assistant Secretary for Environment, Safety and Consumer Affairs and publication in the FEDERAL REGISTER.

(d) This section applies to each amendment of regulations issued under this section.

(e) Regulations issued under this section shall be revised, as necessary, to conform to any amendments that may be made to this part.

§ 25.11 Displaced person; qualifications.

(a) Subject to the requirements of paragraph (c) of this section, a person qualifies as a displaced person if after

January 1, 1971, he moves from real property, or moves his personal property from real property, and the move is a direct result of—

(1) The initiation of negotiations—

(i) For the real property; or

(ii) For the purposes of Subparts D and E and §§ 25.153 and 25.155, for other real property on which he conducts a business or farm operation;

(2) A written notice from the agency concerned of its intent—

(i) To acquire the real property by a definite date; or

(ii) For the purposes of Subparts D and E and §§ 25.153 and 25.155, to acquire other real property on which he conducts a business or farm operation; or

(3) A written order from the agency concerned—

(i) To vacate the real property; or

(ii) For the purposes of Subparts D and E and §§ 25.153 and 25.155, to vacate other real property on which he conducts a business or farm operation.

(b) A person may qualify as a displaced person, regardless of—

(1) Whether the property is acquired by a Federal or State agency;

(2) The method of acquisition;

(3) The name or status of the person who acquires or holds fee title to the property; or

(4) Whether Federal funds contribute directly to the payment for the property, if the property must be acquired for a Federal or Federally-assisted program or project, and the end result is to serve or be considered to serve in the public interest.

(c) A person does not qualify as a displaced person under paragraphs (a)(1) or (2) of this section until—

(1) The agency concerned becomes entitled to possession of the real property under an agreement or a court order in a condemnation proceeding for acquiring the property;

(2) The owner conveys title to the real property to the agency concerned; or

(3) The owner and the agency concerned enter into a contract for the purchase of the real property.

§ 25.13 Notices of intent to acquire real property.

The agency concerned may not issue written notices of intent to acquire real property by a definite date until—

(a) The beginning of any project phase which will cause the displacement of persons who are to receive the written notices; and

(b) The appropriate DOT official has approved the conditions under which the written notices may be issued.

§ 25.15 Comparable replacement dwelling; requirements.

(a) A dwelling is a comparable replacement dwelling for the purposes of this part if it is available on the market and—

(1) Decent, safe, and sanitary;

(2) Functionally equivalent and substantially the same as the dwelling being acquired, but not excluding newly constructed housing, with respect to—

(i) Number of rooms;

(ii) Area of living space;

(iii) Type of construction;

(3) In an area not generally less desirable than the dwelling being acquired with respect to—

(i) Public utilities;

(ii) Public and commercial facilities; and

(iii) Neighborhood conditions, including municipal services, and unreasonably adverse environmental factors;

(4) Reasonably accessible to the place of employment, or potential place of employment, of the head of the displaced family, or the displaced individual, as the case may be;

(5) Adequate in size to accommodate the needs of the displaced family or individual;

(6) Within the financial means of the displaced family or individual;

(7) Is open to all individuals regardless of race, color, religion, or national origin, in a manner consistent with the requirements of title VIII of the Civil Rights Act of 1968, and which is available to all individuals regardless of sex.

(b) If replacement dwellings which meet the requirements of paragraphs

(a) (1) through (7) of this section are not available on the market, the agency concerned may, after a proper finding of the need therefor, treat available dwellings which exceed those requirements as comparable replacement dwellings.

(c) For the purpose of paragraph (a) (6) of this section, a dwelling is within the financial means of an individual or family if, taking into account payments made under Subpart G of this part, the monthly housing cost (including payments for mortgage, insurance, and property taxes) or rental cost is not more than—

(1) 25 percent of the monthly gross income of the individual or family, including supplemental income payments received from public agencies; or

(2) The portion of the monthly gross income of the individual or family, including supplemental income payments received from public agencies, paid for rent or housing cost at the acquired dwelling if the rent or housing cost is not excessive taking into consideration the cost of other needs of the family or individual.

§ 25.17 Decent, safe, and sanitary dwelling; requirements.

(a) A dwelling is decent, safe, and sanitary for the purposes of this part if it—

(1) Meets the applicable State or local building, plumbing, electrical, housing and occupancy codes or similar ordinances or regulations for existing structures;

(2) Has a continuing and adequate supply of potable safe water;

(3) Has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and properly connected to hot and cold water, and to a sewage water drainage system;

(4) Has a cooking stove and refrigerator in good operating condition, if required by local code or ordinance, or, if not so required, utility service connections and adequate space for these installations in the kitchen or area set aside for kitchen use;

(5) Except in a geographical area where it is not normally included in new housing, has an adequate heating system in good working order capable of maintaining a minimum temperature of 68 degrees F. in the living area (not including the bedrooms) under local outdoor temperature design conditions;

(6) Has a bathroom, well lighted and ventilated and affording privacy to an individual within it, containing a lavatory and a bathtub or shower stall, properly connected to an adequate supply of hot and cold running water, and a flush toilet, all in good working order and properly connected to a sewage water drainage system;

(7) Has an adequate and safe electrical wiring system for lighting and other electrical services in each room;

(8) Is structurally sound, clean, weathertight, and in good repair and adequately maintained;

(9) Has a continuous and unobstructed path of travel from any point in the dwelling to a safe open through a common corridor to a safe open space at ground level and, in the case of a multi-dwelling building of more than two stories, at least two continuous and unobstructed paths of travel from the common corridor on each story; and

(10) Has habitable sleeping, living, cooking, and dining floor space (exclusive of such enclosed spaces as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, unfurnished attics, foyers, storage spaces, cellars, utility rooms, or similar spaces) which is subdivided into adequately ventilated rooms sufficient to accommodate the occupants.

(b) If an applicable local housing code does not meet all the requirements of paragraph (a) of this section or there is no local housing code, the agency providing relocation assistance may establish and submit the standards to the appropriate DOT official for approval as acceptable standards for decent, safe, and sanitary housing.

(c) In case of extreme hardship or other similar extenuating circumstances involving a displaced individual or family, the agency concerned may, with the concurrence of the appropriate DOT official, waive any requirement of paragraph (a) of this section.

§ 25.19 Decent, safe, and sanitary rental sleeping rooms; requirements.

(a) A rental sleeping room is decent, safe, and sanitary for the purposes of this part if it—

(1) Meets applicable State or local building, plumbing, electrical, housing and occupancy codes or similar ordinances or regulations for existing structures;

(2) Except in a geographical area where it is not normally included in new housing, has an adequate heating system in good working order which will maintain a minimum temperature of 68 degrees F. under local outdoor temperature design conditions;

(3) Has an adequate and safe electrical wiring system for lighting and other electrical services;

(4) Is structurally sound, clean, weathertight, and in good repair and adequately maintained;

(5) Has a continuous and unobstructed path of travel from any point in a dwelling to a safe open space at ground level and, in the case of a rooming house, access from each sleeping room directly or through a common corridor to a safe open space at ground level and, in the case of a rooming house of more than two stories, at least two continuous and unobstructed paths of travel from the common corridor on each story; and

(6) Provides use of a bathroom, well lighted and ventilated and affording privacy to an individual within it, including a door that can be locked if the facilities are separate from the sleeping room, containing a lavatory and a bathtub or shower stall, properly connected to an adequate supply of hot and cold running water, and a flush toilet, all in good working order and properly connected to a sewage water drainage system.

(b) If an applicable local housing code does not meet all the requirements of paragraph (a) of this section if there is no local housing code, the agency providing relocation assistance may establish and submit the standards to the appropriate DOT official for approval as acceptable standards for decent, safe, and sanitary housing.

(c) In case of extreme hardship or other similar extenuating circumstances involving a displaced individual or family, the agency concerned may, with the concurrence of the appropriate DOT official, waive any requirement of paragraph (a) of this section.

§ 25.21 Appeals.

(a) An applicant for a payment under Subparts E, F, G and I who is aggrieved by an agency's determination as to the applicant's eligibility for payment or the amount of the payment may appeal that determination in accordance with the procedures established by the agency concerned under paragraph (b) of this section.

(b) Each agency concerned shall establish procedures for reviewing appeals by aggrieved applicants for payments under this part. The procedures shall ensure that—

(1) Each appellant applicant has the opportunity for oral presentation;

(2) Each appeal will be decided promptly and the applicant is informed of the decision in writing;

(3) Each appeal decision will include a statement of the reasons upon which it is based;

(4) The agency retains all documents associated with each appeal; and

(5) Each appellant applicant has a right of final appeal to the head of the agency concerned.

§ 25.23 Accounts, records, and reports.

(a) Each agency concerned, in accordance with requirements prescribed by the appropriate DOT official, shall—

(1) Maintain relocation accounts and records and make them available for inspection by Federal officials during regular business hours; and

(2) Submit timely, complete, and accurate reports on relocation assistance and benefits rendered.

(b) The accounts and records maintained under paragraph (a) (1) of this section must be retained by the agency at least 3 years after completion of the project to which they pertain.

§ 25.25 Last resort housing.

If a relocation plan submitted under §§ 25.33 or 25.55 discloses that there are not enough comparable replace-

ment dwellings, the appropriate DOT official may use project funds, or authorize a State agency to use project funds, as the case may be, to develop housing. In doing so, that official is to be guided by criteria and procedures of the Secretary of Housing and Urban Development appearing at 24 CFR Part 43, Subpart A.

§ 25.27 Loans for planning and preliminary expenses.

An appropriate DOT official may make or approve loans for planning and preliminary expenses in connection with the construction or rehabilitation of housing under Section 214 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894). In doing so, that official is to be guided by the criteria and procedures of the Secretary of Housing and Urban Development appearing at 24 CFR Part 43, Subpart B.

§ 25.29 Consultation at planning stage.

(a) Each agency concerned that plans a project which will result in the displacement of persons in an area in which one or more other Federal or State agencies are also planning projects which will result in the displacement of persons, shall—

(1) Coordinate its relocation assistance activities and available housing resources with the other agencies;

(2) Designate at least one employee to meet with the representatives of the other agencies to review the impact of their respective projects on the persons that will be displaced by the project; and

(3) Consult with the appropriate Housing and Urban Development regional area office on the availability of housing resources and provide that office with information concerning the persons that will be displaced by the project. (See 39 FR 37374 for a listing of the area offices.)

(b) Each agency concerned that plans a project which will result in the displacement of persons shall coordinate that project through the State, regional, and metropolitan planning and development clearinghouses pursuant to the Office of Management and Budget Circular published on November 28, 1973, at 38 FR 32374.

§ 25.31 State agency obligated to provide real property for Federal or Federally-assisted project.

(a) Whenever real property is acquired by a State agency and provided as the required contribution incident to a Federal or Federally-assisted project, no DOT official may accept that real property until he determines that the State agency has carried out the requirements of §§ 25.57 and 25.59. However, in the case of displacement of persons or real property acquisition occurring before July 1, 1972, this section is applicable only to the extent that agency was able to meet the requirements of §§ 25.57 and 25.59 under State law.

(b) The cost to a State agency of providing the payments and services required by this part shall be paid in the same manner and to the same extent as the cost of the real property acquired for the project. The Department of Transportation will pay a State agency the full amount of the first $25,000 of the cost of providing payment and services for any person displaced before July 1, 1972.

§ 25.33 Payments not to be considered income.

Payments received by a displaced person under Subparts E, F, or G of this part shall not be considered income for the purpose of—

(a) Internal Revenue Code of 1954; or

(b) Determining the eligibility or extent of eligibility for assistance under the Social Security Act or any other Federal law.

Subpart B—Requirements for Federal Projects

§ 25.41 Scope.

This subpart prescribes requirements governing the administration of real property acquisition and relocation assistance for displaced persons for projects which are part of a Federal program administered by the Department of Transportation.

§ 25.43 Determinations; displacement of persons.

(a) No DOT official may approve a Federal project to which this part applies which will result in the displacement of any person until he determines that—

(1) Fair and reasonable relocation payments will be provided to displaced persons as required by Subparts E, F, and G of this part;

(2) Relocation assistance programs offering the services described in Subpart D of this part will be provided for displaced persons;

(3) The public was or will be adequately informed of the relocation payments and services which will be available under Subparts D, E, F, and G of this part; and

(4) Comparable replacement dwellings will be available, or provided if necessary, within a reasonable period of time before any individual or family is displaced.

(b) No DOT official may proceed with any phase of a Federal project if that phase will cause the displacement of any individual or family until—

(1) He determines that based on a current survey and analysis of available replacement housing and considering competing demands for that housing, comparable replacement dwellings will be available within a reasonable period of time prior to displacement equal in number to the displaced individuals and families that require them;

(2) He determines that adequate provisions have been made to provide orderly, timely, and efficient relocation of displaced individuals and families to decent, safe, and sanitary housing available without regard to race, color, religion, sex, or national origin with minimum hardship to those affected; and

(3) He prepares a relocation plan which meets the requirements of § 25.55 (a), (b) and (c).

§ 25.45 Determinations; acquisition of real property.

No DOT official may approve a Federal project to which this part applies and which will result in the acquisition of real property until he determines that adequate provisions have been made to—

(a) Fully comply with the requirements of Subpart I, of this part; and

(b) Inform the public of the acquisition policies, requirements, and payments which will apply to the project.

Subpart C—Requirements for Federally-Assisted Projects

§ 25.51 Scope.

This subpart prescribes requirements governing the administration of real property acquisition and relocation assistance for displaced persons for projects which are part of a Federally-assisted program administered by the Department of Transportation.

§ 25.53 Preliminary requirements.

Before a State agency begins a Federally-assisted project to which this part applies, it shall—

(a) Make preliminary investigations of relocation problems by visual inspection of the proposed project area and by community and other sources where available to determine—

(1) The approximate number of persons that will be displaced;

(2) The number of businesses and farm operations that will be displaced;

(3) The characteristics of the individuals and families that will be displaced with respect to racial and ethnic identification, age, number of children, income level, nature of occupancy and tenure of residency.

(4) The probable availability of comparable replacement dwellings.

(b) Submit to the appropriate DOT official—

(1) A statement of the basis for the data required by paragraph (a) of this section;

(2) A statement of the displacement problems involved at each identifiable location, along with possible solutions; and

(3) If the data required by paragraph (a) of this section disclose that the comparable replacement dwellings will be insufficient to meet the displacement needs of the project, a description of the actions proposed to insure that the necessary dwellings

will be available in advance of any displacement.

If a public hearing is held concerning the project, the State agency shall submit the information required by paragraph (b) of this section in advance of that hearing. Where prepared, the information shall be set forth in an environmental impact statement or in a negative declaration.

§ 25.55 Relocation plan required.

No DOT official may authorize a State agency to proceed with any phase of a Federally-assisted project to which this part applies until the State agency has submitted a relocation plan to him for approval. The plan shall include:

(a) An inventory of the characteristics and needs of persons to be displaced. This inventory may be based upon a representative sampling process rather than a complete occupancy survey.

(b) An estimated inventory of currently available comparable replacement dwellings. The inventory shall set forth for each dwelling the type of house or building, state of repair, number of rooms, type of neighborhood, proximity of public transportation, schools, and commercial shopping areas, and distance to any pertinent social institutions, such as religious and community facilities.

(c) An analysis of the information required by paragraphs (a) and (b) of this section which—

(1) Discusses relocation problems and possible solutions;

(2) Provides an analysis of Federal, State, and community programs currently in operation in the project area which will affect the availability of housing;

(3) Provides detailed information on concurrent displacement and relocation by other governmental agencies or private concerns;

(4) Describes the methods to be used to relocate displaced persons; and

(5) Explains the amount of lead time necessary to carry out a timely, orderly, and humane relocation program.

(6) Sets forth the results of consultation held under § 25.29.

§ 25.57 Assurances required; displacement of persons.

(a) No DOT official may approve a Federally-assisted project to which this part applies and which results in the displacement of any person until the head of the State agency provides that official with satisfactory written assurances that after January 1, 1971—

(1) It provides fair and reasonable relocation payments to displaced persons as required by Subparts E, F, and G of this part;

(2) It provides relocation assistance programs for displaced persons offering the services described in Subpart D of this part;

(3) It adequately informs the public of the relocation payments and services which are available under Subparts D, E, F, and G of this part; and

(4) Based on the requirements of § 25.53 comparable replacement dwellings are available, or provided if necessary, within a reasonable period of time before any individual or family is displaced. However, the assurances required by this paragraph apply to displacements occurring before July 1, 1972, only to the extent the State agency was able to make the assurances under State law.

(b) No DOT official may authorize a State agency to proceed with any phase of a project if that phase will cause the displacement of any individual or family until that official receives satisfactory, written assurance from the head of the State agency that—

(1) Based on a current survey and analysis of available replacement housing and in considering competing demands for that housing, comparable replacement dwellings will be available within a reasonable period of time prior to displacement, equal in number to the displaced individuals and families that require them; and

(2) The State agency relocation program is realistic and is adequate to provide orderly, timely, and efficient relocation of displaced individuals and families to decent, safe, and sanitary housing available without regard to race, color, religion, sex, or national

origin with minimum hardship to those affected.

§ 25.59 Assurances required; acquisition of real property.

No DOT official may approve a Federally-assisted project to which this part applies and which results in the acquisition of real property until the head of the State agency concerned provides that official with satisfactory written assurances that after January 1, 1971, it—

(a) Is guided by the requirements of §§ 25.253, 25.255, 25.257 and 25.259 to the greatest extent practicable under State law and fully complies with all other requirements of Subpart I of this part; and

(b) Adequately informs the public of the acquisition policies, requirements, and payments which apply to the project. However, the assurances required by this section apply to real property acquisitions occurring before July 1, 1972, only to the extent the State agency was able to make the assurances under State law.

§ 25.60 Monitoring assurances.

After a State agency provides the assurances under §§ 25.57 and 25.59 for a Federally-assisted project, the appropriate DOT official shall monitor the activities of the State agency with respect to the project to insure that those assurances are or have been carried out.

§ 25.61 Use of Federal financial assistance.

(a) Federal financial assistance may not be used for relocation and acquisition costs unless—

(1) The Federally-assisted project concerned has been approved and authorized to proceed;

(2) The relocation and acquisition costs are lawfully incurred; and

(3) The project agreement has been executed for the particular project involved.

(b) The type of interest acquired in real property does not affect the eligibility of related relocation costs for Federal financial assistance provided the interest is sufficient to cause displacement.

(c) Federal financial assistance may not be used to pay a relocated person for any loss that is due to his negligence.

(d) Federal financial assistance may not be used for any payment under this part to a displaced person if that person receives a separate payment which is—

(1) Required by the State law of eminent domain;

(2) Determined by the appropriate DOT official to have substantially the same purpose and effect as a payment under this part; and

(3) Otherwise included as a project cost for which Federal financial assistance is available.

§ 25.63 Federal share of costs.

(a) The cost to a State agency of providing the payments and services required by this part, shall be included as part of the cost of the Federally-assisted project and, except as provided in paragraphs (b) and (c) of this section, the State agency is eligible for Federal financial assistance with respect to those costs in the same manner and to the same extent as other project costs.

(b) If Federal financial assistance is by grant or contribution, the Department of Transportation will pay a State agency the full amount of the first $25,000 of the cost of providing the payments and services described in this part for any displaced person because of any acquisition or displacement occurring before July 1, 1972.

(c) If Federal financial assistance is by loan, the Department of Transportation will loan a State agency the full amount of the first $25,000 of the cost of providing the payments and services described in this part for any displaced person because of any acquisition or displacement occurring before July 1, 1972.

Subpart D—Relocation Assistance Advisory Programs

§ 25.71 Scope.

This subpart prescribes requirements for relocation assistance advisory programs for persons who will be displaced by projects which are part of

a Federal or Federally-assisted program administered by the Department of Transportation.

§ 25.73 Extension of services to adjacent occupants.

Each agency concerned shall provide the relocation assistance advisory services described in this subpart to all prospective displaced persons. The agency may also offer those services to any person occupying property immediately adjacent to the real property being acquired who, in the agency's opinion, will suffer substantial economic injury.

§ 25.75 Relocation programs; general requirements.

Each agency concerned shall carry out a relocation assistance advisory program so that displaced persons will receive uniform and consistent services and payments regardless of race, color, or national origin pursuant to Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000a) and Part 21 of this title. The program must provide for—

(a) Explaining to persons the relocation assistance and payments that are available;

(b) Assisting persons to complete applications required for payments;

(c) Determining the needs of persons for relocation assistance;

(d) Informing persons as to the availability and costs of comparable replacement dwellings and comparable locations for businesses and farm operations;

(e) Assisting each individual or family to obtain and move to a comparable replacement dwelling;

(f) Informing individuals and families as to Federal and State housing programs; and

(g) Providing counsel and advice to displaced persons that will minimize the hardships associated with adjusting to a new location.

§ 25.77 Organizational requirements.

The organization and procedures of the agency concerned for carrying out a relocation assistance advisory program must include provisions for:

(a) Assigning at least one employee whose primary responsibility is to provide relocation assistance for one or more projects.

(b) Establishing a local relocation office for each project where the agency determines that the volume of work or the needs of the displaced persons so require.

(c) Maintaining and providing the following information for each project:

(1) Lists of replacement dwellings available without regard to race, color, religion, sex, or national origin drawn from various sources, suitable in price, size, and condition for individuals and families.

(2) Current information as to security deposits, closing costs, typical down payments, interest rates, and terms for residential real property in the area.

(3) Maps showing the location of schools, parks, playgrounds, shopping, and public transportation routes in the area.

(4) Schedules and costs of public transportation in the area.

(5) Copies of:

(i) The agency's brochure explaining its relocation program;

(ii) Local ordinances pertaining to housing and building codes;

(iii) Consumer education literature on housing, shelter costs, and family budgeting; and

(iv) Federal and local statutes and regulations on open housing.

(6) Subscriptions for apartment directory services, neighborhood and metropolitan newspapers, and where available, multiple listing services.

§ 25.79 Local relocation office.

(a) A determination of whether or not to establish a local relocation office must be made before any phase of a project causes the displacement of any person, and submitted to the appropriate DOT official for approval.

(b) The office must be established at a place reasonably convenient to public transportation or within walking distance of the project and shall be open during hours (including evening hours when necessary) convenient to the persons being displaced.

(c) In the employment of individuals in the local relocation office, consider-

ation should be given to those who are familiar with the problems of the area.

§ 25.81 Coordination with other agencies.

(a) Each agency concerned shall coordinate its relocation assistance activities with the local officials of the Federal Housing Administration and Veterans Administration responsible for making properties acquired by those agencies available for direct sale to persons to be relocated as a result of governmental action.

(b) The employee assigned by the agency concerned to provide relocation assistance for a particular project shall maintain personal contact and exchange information with welfare agencies, urban renewal agencies, redevelopment authorities, public housing authorities, the Federal Housing Administration, the Veterans Administration, the Small Business Administration and other Federal and State agencies providing services to displaced persons. He shall also collect and maintain information on private replacement properties in the area of the project through personal contact with real estate brokers, real estate boards, property managers, apartment owners and operators, and home building contractors.

§ 25.83 Public information; general.

(a) To ensure public awareness of its relocation assistance advisory program, when a public hearing is held for a project, the agency concerned shall provide an opportunity for presentation of information and discussion of relocation services and payments at the hearing. The agency shall also prepare a relocation brochure, and give full and adequate public notice of the relocation program for each project to which this part applies.

(b) In areas where a language other than English is predominant, public information must be published in the predominant language as well as in English, unless—

(1) The appropriate DOT official finds that publication in a language other than English is unnecessary; and

(2) An alternative program is established for the displaced person unable to communicate in English.

§ 25.85 Public information; hearings.

If a public hearing is held for a project, the following information must be presented at the hearing:

(a) Eligibility requirements, payment procedures and limitations for moving expenses and replacement housing;

(b) A description of the expenses incidental to transfer of property that will be paid;

(c) Appeal procedures;

(d) A description of how relocation assistance and services will be provided;

(e) The address and telephone number of the local office of the State agency and the name of the relocation officer in charge;

(f) The identity, local address, and telephone number of any other cooperating agency;

(g) An estimate of the number of individuals, families, businesses, and farm operations to be relocated;

(h) The estimated number of dwelling units presently available to meet the replacement housing needs; and

(i) An estimate of the time necessary for relocation and the number of comparable replacement dwellings that will become available during that period. The extent of the presentation should depend on the comprehensiveness of the brochure. If the brochure covers a particular item in detail, it is sufficient to merely highlight what the brochure contains. If a particular item is not applicable to the project, it is not necessary to discuss the item in detail.

§ 25.87 Public information; brochure.

The agency concerned shall prepare a brochure which fully describes its relocation assistance advisory program, including information on payments for replacement housing, moving expenses and appeal procedures. The brochure must be distributed free of charge at all public hearings and given to any prospective displaced person upon request. The brochure must state where copies of any regulations implementing the relocation assistance program may be obtained.

§ 25.89 Public information; announcements.

The agency concerned shall provide brief public announcements of the relocation services, payments, and where the brochure describing the relocation program can be obtained, unless the appropriate DOT official finds that public announcements are not necessary because only a small number of persons will be displaced. Public announcements must be made over any type of mass media that is familiar to persons who will be displaced by the project, such as local newspapers, radio, television, or posted advertisements.

§ 25.91 Public information; notices.

Within 15 days after approval to begin any phase of a project which will cause the displacement of any person, unless prohibited by law, the agency concerned shall post notices of acquisition in adequate numbers and in places accessible to occupants of dwellings to be taken for the project. In addition, an adequate number of advertisements must be run in newspapers normally read by occupants of dwellings to be taken. The posted notices and newspaper advertisements must—

(a) State the date approval was given for that phase of the project;

(b) Define the area of the project;

(c) Advise occupants of the area of the eligibility requirements for receiving moving and replacement housing payments;

(d) Advise occupants to notify the agency before moving to ensure eligibility for moving and replacement housing payments;

(e) Advise homeowners that to be eligible for relocation benefits they must sell to the agency concerned; and

(f) State where the brochure describing the relocation program may be obtained.

§ 25.93 Information for displaced persons.

(a) The agency concerned shall deliver to each prospective displaced person either in person or by certified or registered first-class mail, return receipt requested—

(1) A brochure explaining the relocation assistance advisory program; and

(2) If it is not included in the brochure, a notice stating the eligibility requirements for payments for replacement housing and moving expenses.

(b) In addition to the information furnished under paragraph (a) of this section, the agency concerned shall deliver to each homeowner and tenant that will be displaced, either in person or by certified or registered first-class mail, return receipt requested, a written statement setting forth the optional types and amounts of replacement housing payments to which they may be entitled.

(c) The information required by paragraphs (a) and (b) of this section must be furnished—

(1) To homeowners not later than the initiation of negotiations for the property or the issuance of a written notice of intent to acquire the property by a definite date, as the case may be; and

(2) To tenants within 7 days after the initiation of negotiations for the property or the issuance of a written notice of intent to acquire the property by a definite date, as the case may be.

(d) The agency concerned shall notify each prospective displaced person of his right of appeal under § 25.21.

Subpart E—Moving and Related Expenses

§ 25.111 Scope.

This subpart prescribes the requirements governing the payment of moving and related expenses of persons displaced by projects which are part of a Federal or Federally-assisted program administered by the Department of Transportation.

§ 25.113 Eligibility.

(a) A displaced person is eligible for payment of moving and related expenses under this subpart without regard to the length of time that he occupied the real property from which he is displaced.

(b) A person eligible for a payment under § 25.121 with respect to a business or farm operation may also be eli-

gible for a payment under § 25.121 as a dwelling occupant, even though he resides on the business or farm property that is acquired.

§ 25.115 Payment limited to one move; exception.

(a) Except as provided by paragraph (b) of this section, payment of a displaced person's moving and related expenses may not be made for more than one move in connection with a particular project.

(b) If the appropriate DOT official considers it to be in the public interest, he may authorize payment of a displaced person's moving and related expenses for additional moves.

§ 25.117 Moving expenses; application and payment.

(a) Upon application by a displaced person for payment of moving and related expenses, the agency concerned shall—

(1) Pay those expenses in accordance with this subpart; or

(2) If the applicant elects to receive it, pay him a fixed allowance in accordance with Subpart F of this part.

(b) The application must be in writing and filed with the agency concerned within 18 months after the date the applicant moves from real property, or moves his personal property from real property, as the case may be, or the date of acquisition, whichever is later. The application must include an itemization of the expenses involved and, except as provided in paragraphs (d) and (e) of this section, must be supported by receipts and such other evidence as the agency concerned may require.

(c) A displaced person may not be paid for his moving expenses in advance of the actual move unless the agency concerned finds that a hardship would otherwise result.

(d) If a displaced person, his mover, and the agency concerned agree in writing, the displaced person may submit an unpaid bill for moving expenses for direct payment.

(e) If the agency concerned contracts with independent movers on a schedule basis and provides a displaced person with a list of movers he may choose from to move his personal property, payment shall be made directly to the mover.

(f) In the case of a self-move by a displaced person who conducts a business or farm operation, the amount of payment for actual reasonable moving expenses is negotiable but may not be more than the lower of two firm bids or estimates received by the agency concerned, unless the appropriate DOT official determines that a greater amount is justified.

§ 25.119 Exclusions.

A displaced person is not entitled to be paid for—

(a) Additional expenses incurred because of living in a new location;

(b) The cost of moving structures or other improvements to real property in which ownership is reserved by the displaced person, except as otherwise provided under § 25.193.

(c) Improvements to the replacement site, except when required by law;

(d) Interest on loans to cover moving expenses;

(e) Loss of good will;

(f) Loss of profits;

(g) Loss of trained employees;

(h) Personal injury;

(i) Cost of preparing the application for moving and related expenses;

(j) Expenses in searching for a replacement dwelling; or

(k) Any item which the appropriate DOT official excludes from payments consistent with this part.

§ 25.121 Moving expenses; displaced persons.

(a) Except as provided in § 25.119, a displaced person is entitled to actual reasonable expenses for—

(1) Transporting individuals, families and personal property from the displacement site to a replacement site, but not more than fifty (50) miles unless the agency concerned finds that the displaced person cannot relocate within that distance;

(2) Packing and unpacking, crating and uncrating, and, if the agency concerned finds it necessary, storing his personal property for not more than 12 months;

(3) If the agency concerned finds it necessary advertising for packing, crating, storing or transporting his personal property;

(4) Insuring against loss or damage of his personal property while in storage or transit;

(5) Removing and reinstalling machinery, appliances, and equipment, including modifying the machinery, appliance, or equipment, and reconnecting utilities, if—

(i) It is not acquired by the agency concerned as real property; and

(ii) The displaced person agrees in writing that the machinery, appliance, or equipment is personal property and releases the agency concerned from paying for it;

(6) Searching for a replacement business or farm operation, to the extent those expenses meet the requirements of § 25.129, if the displaced person conducts a business or farm operation which is discontinued or relocated; and

(7) Such other reasonable expenses determined to be allowable by the appropriate DOT official.

(b) A displaced person is entitled to be reimbursed for uninsurable loss or damage of his personal property while in the process of moving, if the loss or damage was not the result of his fault or damage.

(c) A displaced person who conducts a business or farm operation which is discontinued or relocated is entitled to the actual direct losses of personal property resulting from the discontinuation or relocation, to the extent those losses meet the requirements of § 25.127.

§ 25.123 Moving expenses; outdoor advertising businesses.

(a) A displaced person who conducts a lawful activity primarily for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of outdoor advertising displays, whether or not the displays are located on the premises on which any of those activities are conducted, is entitled to the moving expenses described in § 25.121. However, if the cost of moving an outdoor advertising display is more than the inplace fair market value of the display, the agency concerned shall consider acquiring the display as part of the real property, unless prohibited by State law.

(b) Paragraph (a) of this section does not apply to an outdoor advertising display owned by and located on the premises of a business or farm operation being displaced.

§ 25.125 Low value, high bulk property; businesses and farm operations.

In the case of low value, high bulk personal property, such as junk, stockpiled sand, gravel, minerals, metals, or similar items, used in connection with a relocated business or farm operation, payment for actual reasonable moving expenses may not be more than the cost of replacing that property at the relocation site less the amount for which it could be sold at the displacement site.

§ 25.127 Actual direct losses; businesses and farm operations.

(a) Subject to the requirements and limitations in paragraphs (b) through (e) of this section, a displaced person who conducts a business or farm operation is entitled to payment for actual direct losses of personal property that is used in connection with the business or farm operation but is—

(1) No longer needed because the business or farm operation is being discontinued; or

(2) Not being moved to a relocation site because it is not suitable for use there.

(b) A displaced person who conducts a business or farm operation which is discontinued or relocated shall make a bona fide effort to sell personal property he does not move.

(c) If a displaced person relocates a business or farm operation and sells an item of personal property and promptly replaces it with a comparable item, payment for actual direct loss of the original item may not be more than the replacement cost less its sale price, or the estimated cost of moving the original item, whichever is less.

(d) If a displaced person discontinues a business or farm operation and

sells an item of personal property, payment for actual direct loss of the item may not be more than the fair market value of the personal property for continued use at its location prior to displacement less its sale price, or the estimated cost of moving the original item 50 miles, whichever is less.

(e) If a displaced person abandons an item of personal property after making a bona fide effort to sell it, payment for the actual direct loss of that item may not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the original item 50 miles, whichever is less, irrespective of the cost to the agency concerned of removing that item.

§ 25.129 Expenses in searching for replacement business or farm operation.

(a) Except as provided in paragraph (b) of this section, a displaced person who conducts a business or farm operation is entitled to not more than $500, or such higher amount as the agency concerned considers justified under the circumstances, for actual reasonable expenses in searching for a replacement business or farm operation including—

(1) Cost of travel;

(2) Cost for meals and lodging;

(3) An amount for time spent searching, based on the salary or earnings of the displaced person from the business or farm operation, but not more than $10 per hour; and

(4) If the agency concerned considers it desirable, the cost of a broker or realtor, or other professional fees, to locate a replacement site.

(b) A displaced person who conducts an advertising business described in § 25.123, is entitled to not more than $100, or if the agency concerned considers it justified under the circumstances not more than $500, for actual reasonable expenses in searching for a replacement outdoor advertising display site.

Subpart F—Fixed Allowance in Lieu of Moving and Related Expenses

§ 25.151 Scope.

This subpart prescribes the requirements governing payment of dislocation and moving expense allowances to displaced persons who are eligible for payment of their actual moving and related expenses under Subpart E of this part, but elect to receive a fixed allowance in lieu thereof.

§ 25.153 Schedule of moving expense allowances; individuals and families.

The Federal Highway Administrator shall—

(a) Establish and maintain in Appendix A to this part a schedule of moving expense allowances applicable to individuals and families displaced by projects to which this part applies for each State. The schedule shall cover every locality in the State and shall be based on current local moving costs. The allowances for any individual or family may not be more than $300.00.

(b) Amend Appendix A of this part to reflect any changes in the schedule covered by that appendix by publication in the FEDERAL REGISTER in January and June of each year.

[Amdt. 25-2, 40 FR 58456, Dec. 17, 1975]

EDITORIAL NOTE: Appendix A tables, referred to in § 25.153, are updated semiannually. For revisions, see List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 25.155 Dislocation and moving expense allowances; individuals and families.

(a) Except as provided in paragraph (b) of this section, a displaced individual or family who elects to receive fixed dislocation and moving expense allowances in lieu of payment of actual moving and related expenses is entitled to—

(1) A dislocation allowance of $200; and

(2) The applicable moving expense allowance specified in the schedule of moving expense allowances maintained in Appendix A for the locality in which the displacement occurs.

(b) Two or more individuals, not a family, who occupy the same dwelling,

are considered to be a single family for the purposes of this section.

§ 25.157 Fixed allowance; profit and nonprofit businesses.

(a) A displaced person who conducts a business (other than an advertising business as described in § 25.123) which meets the requirements of paragraphs (b) or (c) of this section may elect to receive a fixed allowance in lieu of actual moving and related expenses equal to the average annual net earnings of the business, computed in accordance with § 25.161, but not less than $2,500 or more than $10,000.

(b) A business conducted for profit qualifies for payment under this section if, in the opinion of the agency concerned, it—

(1) During the two taxable years immediately preceding displacement has—

(i) Average gross receipts of at least $2,000 in value;

(ii) Average annual net earnings of at least $1,000 in value; or

(iii) Contributes to at least 33½ percent of the average gross income of the displaced person.

(2) Cannot be relocated without substantial loss of existing patronage, taking into consideration—

(i) The type of the business;

(ii) The nature of its clientele;

(iii) The relative importance of the displacement and proposed relocation sites to the business; and

(iv) The availability of the relocation site for the business; and

(3) Is not part of a commercial enterprise having at least one other establishment engaged in the same or similar business which is not being acquired by the agency concerned.

(c) A business conducted by a nonprofit organization qualifies for payment under this section if, in the opinion of the agency concerned, it—

(1) Cannot be relocated without substantial loss of existing patronage, taking into consideration the persons, community, or clientele served or affected by the business; and

(2) Is not part of a commercial enterprise having at least one other establishment engaged in the same or similar business which is not being acquired by a State agency or the United States.

§ 25.159 Fixed allowance; farm operation.

(a) A displaced person who conducts a farm operation and elects to receive a fixed allowance in lieu of actual moving and related expenses is entitled to a fixed amount equal to the average annual net income of the farm operation, computed in accordance with § 25.161, but not less than $2,500 or more than $10,000. Each farm operation shall be subject to the criteria established in § 25.157(b)(1).

(b) In the case of a partial acquisition and displacement of a farm operation, the fixed allowance described in paragraph (a) of this section may be paid only if the agency concerned determines that—

(1) The displaced activity was a farm operation before the acquisition or the displacement site;

(2) The acquisition caused the displacement from the farm operation or the remaining land; or

(3) The acquisition caused such a substantial change in the nature of the farm operation as to constitute a displacement.

§ 25.161 Computing average annual net income; businesses and farm operations.

(a) For the purposes of this subpart, the average annual net earnings is one-half of any net earnings of a business or farm operation before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which it was displaced. Net earnings include any compensation obtained from the business or farm operation by its owner, his spouse, or dependents. However, when a business or farm operation has no average annual net earnings or has an average annual net deficit during the period used to compute average annual net earnings, the person who conducts that business or farm operation may receive a $2,500 payment if he is otherwise eligible for payment under §§ 25.157 or 25.159.

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§ 25.163 Rules in considering fixed allowance; businesses and farm operations.

(a) If the agency concerned finds that the two tax years immediately preceding displacement are not representative, or if the business or farm operation has not been in operation that long, it may, with the concurrence of the appropriate DOT official, prescribe some other time period for computing average annual net earnings.

(b) If the agency concerned finds that the criteria established in §§ 25.157(b)(i) or 25.159(b) creates an inequity in a particular case, it may, with the concurrence of the appropriate DOT official, prescribe other criteria.

(c) If a displaced person who conducts a business or farm operation elects to receive a fixed payment under this subpart, he shall provide proof of his earnings from the business or farm operation to the agency concerned. Proof of earnings may be established by income tax returns, certified financial statements, or other similar evidence.

Subpart G—Replacement Housing Payments

§ 25.171 Scope.

This subpart prescribes the requirements governing payment for replacement housing for individuals and families displaced by projects which are part of a Federal or Federally-assisted program administered by the Department of Transportation.

§ 25.173 Purchase of a decent, safe, and sanitary dwelling.

A displaced tenant or homeowner "purchases" a dwelling within the meaning of this subpart when he—

(a) Acquires an existing dwelling;

(b) Rehabilitates a substandard dwelling which he owns or acquires;

(c) Relocates a dwelling which he owns or acquires;

(d) Relocates and rehabilitates a substandard dwelling which he owns or acquires;

(e) Constructs a new dwelling on a site which he owns or acquires;

(f) Contracts to purchase a dwelling on a site provided by a builder; or

(g) Contracts for the construction of a dwelling on a site provided by a builder or on a site which he owns or acquires.

§ 25.175 Occupancy.

(a) A displaced tenant or homeowner "occupies" a dwelling within the meaning of this subpart only if the dwelling is his permanent place of residence.

(b) If a tenant or homeowner contracts for the construction or rehabilitation of a replacement dwelling, and for reasons not within his control the construction or rehabilitation is delayed beyond the date occupancy is required, the agency concerned may extend the period of eligibility for a replacement housing payment until the tenant or homeowner occupies the replacement dwelling.

§ 25.177 Inspection of replacement dwelling required.

(a) Before making a replacement housing payment to a displaced homeowner or tenant, or releasing a payment from escrow, as the case may be, the agency concerned shall inspect the replacement dwelling to determine whether or not it meets the criteria for decent, safe, and sanitary dwellings. The agency concerned may use the services of any public agency ordinarily engaged in housing inspection to conduct the inspection required by this section.

(b) A determination by the agency concerned that a dwelling meets the criteria for decent, safe, and sanitary housing is solely for the purpose of this subpart and is not a representation for any other purpose.

§ 25.179 Application and payment.

(a) Upon application by a displaced homeowner or tenant who meets the requirements of this subpart for a replacement housing payment, the agency concerned shall—

(1) If he has purchased or rented, and occupied a decent, safe, and sanitary dwelling, make the payment directly to him, or, at his option, to the

seller or lessor of the decent, safe, and sanitary dwelling; or

(2) If he has purchased or rented, but not yet occupied a decent, safe, and sanitary dwelling, upon his request make the payment into an escrow account.

(b) The application must be in writing and filed with the agency concerned within 6 months after the date the applicant becomes eligible for a replacement housing payment in accordance with § 25.181.

§ 25.181 Eligibility.

(a) A displaced homeowner is eligible for a replacement housing payment under §§ 25 183 or 25.185(a), if he—

(1) Qualifies as a displaced person under § 25.11;

(2) Actually owned and occupied the acquired dwelling for at least 180 consecutive days immediately before the initiation of negotiations for the property or the issuance of a written notice of intent to acquire the property by a definite date, as the case may be;

(3) In the case of a payment under § 25.183, purchases and occupies, or in the case of a payment under § 25.185(a), rents and occupies a decent, safe and sanitary dwelling within one year after the latest of the following events:

(i) He receives final payment for the acquired dwelling;

(ii) In the case of a condemnation suit, the State agency deposits the required amount in court for the benefit of the owner; or

(iii) He is required to move from the acquired dwelling.

(b) A displaced homeowner who is not eligible for a replacement housing payment under § 25.183, is eligible for a payment under § 25.185, if he—

(1) Qualifies as a displaced person under § 25.11;

(2) Actually owned and occupied the acquired dwelling for at least 90 consecutive days immediately before the initiation of negotiations for the property or the issuance of a written notice of intent to acquire the property by a definite date, as the case may be; and

(3) Rents or purchases, and occupies a decent, safe and sanitary dwelling within one year after the latest of the following events:

(i) He receives final payment for the acquired dwelling;

(ii) In the case of a condemnation suit, the State agency deposits the required amount in court for the benefit of the owner; or

(iii) He is required to move from the acquired dwelling.

(c) A displaced tenant is eligible for a replacement housing payment under § 25.185 if he—

(1) Qualifies as a displaced person under § 25.11;

(2) Actually lawfully occupied the acquired dwelling for at least 90 consecutive days immediately before the initiation of negotiations for the property or the issuance of a written notice of intent to acquire the property by a definite date, as the case may be; and

(3) Rents or purchases, and occupies a decent, safe and sanitary dwelling within one year after the date he is required to move from the acquired dwelling, or if earlier, the date he actually moves.

(d) For the purpose of paragraphs (a)(2) and (b)(2) of this section, if a homeowner inherits an interest in a dwelling by devise or operation of law, his tenure of ownership includes the tenure of the preceding homeowner.

§ 25.183 Replacement housing payment; purchase price.

A displaced homeowner who qualifies under § 25.181(a) is entitled to a replacement housing payment of not more than $15,000. Within that limitation the payment includes the following amounts:

(a) Subject to the requirements of § 25.189, if the reasonable cost of a comparable replacement dwelling is more than the acquisition price of the acquired dwelling, the difference between them.

(b) If there was a bona fide mortgage which constituted a valid lien on the acquired dwelling for at least 180 days before the initiation of negotiations for the acquired dwelling and if the cost of financing the purchase of a replacement dwelling includes increased interest costs, an amount to compensate for that increase, as provided in § 25.195.

(c) An amount necessary to cover incidental expenses on the purchase of a replacement dwelling, but not including prepaid expenses, as provided in § 25.197.

§ 25.185 Replacement housing payments; rent and down payments.

A displaced homeowner or a displaced tenant who qualifies under § 25.181 is entitled to a replacement housing payment of not more than $4,000. Within that limitation the payment is that amount necessary for—

(a) The homeowner who qualifies under § 25.181(a) to rent a comparable replacement dwelling for a period of not more than four years, subject to the requirements of §§ 25.199 and 25.201; or

(b) The homeowner who qualifies under § 25.181(b) or the tenant who qualifies under § 25.181(c) to—

(1) Rent a comparable replacement dwelling for a period of not more than four years, subject to the requirements of §§ 25.199 and 25.201; or

(2) Make the down payment required for a conventional loan (including incidental expenses as provided in § 25.197) on the purchase of a comparable replacement dwelling, subject to the requirements of § 25.207.

§ 25.187 Rules for considering land values.

In determining the amount of a replacement housing payment under § 25.183(a) the following rules apply:

(a) If the acquired dwelling is located on a tract typical for residential use in the area, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical for the area less the acquisition price of the acquired dwelling.

(b) If the acquired dwelling is located on a tract larger than typical for residential use in the area, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical for residential use in the area less the acquisition price of the dwelling assuming it is located on a tract typical for the area.

(c) If the acquired dwelling is located on a tract that has a use higher and better than residential, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical for residential use in the area less the acquisition price of that portion of the acquired land which represents a tract typical for residential use in the area.

§ 25.189 Limitations; payment for purchase price.

(a) The price established as the reasonable cost of a comparable replacement dwelling under § 25.191 sets the upper limit of the differential amount payable under § 25.183(a). To qualify for any amount, the homeowner must purchase before the initiation of negotiations for the acquired dwelling and if the cost of and occupy a decent, safe, and sanitary dwelling higher in price than the acquired dwelling.

(b) If the homeowner voluntarily purchases and occupies a decent, safe, and sanitary dwelling at a price less than the reasonable cost established for a comparable replacement dwelling, the amount payable under § 25.183(a) is that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the decent, safe, and sanitary dwelling.

§ 25.191 Reasonable cost of comparable replacement dwelling.

(a) In determining the reasonable cost of a comparable replacement dwelling, the agency concerned shall use one of the following methods:

(1) It may establish a schedule of reasonable acquisition costs for the various types of comparable replacement dwellings. If more than one agency is administering a project causing displacements in the area, it shall cooperate with those agencies in establishing a uniform schedule for the area. The schedule must be based on a current analysis of the market to determine a reasonable cost for each type of dwelling to be purchased. In large urban areas this analysis may be confined to one area of the city, or may cover several different areas if they are comparable and equally accessible to public services and places of employment. To assure the greatest comparability of dwellings in any anal-

ysis, the analysis must be divided into classifications of the type of construction, number of rooms, and price ranges.

(2) It may determine the reasonable cost of a comparable replacement dwelling by examining the probable selling prices of at least three comparable replacement dwellings. Selection of the dwellings must be made by a qualified employee of the agency concerned who is familiar with real property values and current real estate transactions.

(3) If it finds that the methods described in paragraphs (a) (1) and (2) of this section are not feasible for determining the reasonable cost of a comparable replacement dwelling, it may propose what it considers to be a feasible method to the appropriate DOT official for approval.

§ 25.193 Owner retention.

(a) If a displaced homeowner elects to retain, move, and occupy his dwelling, the amount payable under § 25.183(a) is the difference between the acquisition price of the acquired dwelling and the sum of—

(1) The moving and restoration expenses;

(2) The cost of correcting decent, safe, and sanitary deficiencies, if any; and

(3) The actual purchase price of a comparable relocation site.

(b) The amount computed in accordance with paragraph (a) of this section is subject to the limitations prescribed in § 25.189.

§ 25.195 Increased interest costs.

(a) The amount payable for increased interest costs under § 25.183(b) is—

(1) The present value of the difference in interest costs and other debt service costs (including points paid by the purchaser) charged for refinancing an amount equal to the new mortgage or the balance of the mortgage on the acquired dwelling at the time of acquisition, whichever is less over a period equal to the term of the new mortgage or the remaining term of the mortgage on the acquired dwelling, whichever is shorter; or

(2) An amount based on a schedule prescribed or approved by the appropriate DOT official and computed in accordance with this section.

(b) For purposes of computing increased interest costs, the following rules apply:

(1) The interest charge on the new mortgage may not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(2) The present value of the increased interest cost must be computed at the prevailing interest rate paid on savings deposits by commercial banks in the area in which the replacement dwelling is located.

(3) Purchaser's points or origination fees, or both, may be added to the increased interest costs upon approval by the appropriate DOT official.

(4) Seller's points may not be added to the increased interest costs.

§ 25.197 Incidental expenses.

(a) The incidental expenses payable under § 25.183(c) or § 25.185(b)(2) is the amount necessary to compensate the homeowner or tenant for actual costs incurred incident to the purchase of a decent, safe, and sanitary dwelling, including the following:

(1) Legal closing costs, including title search, preparing conveyance instruments, notary fees, surveys, preparing plats, and charges incident to recordation.

(2) Lender, FHA, or VA appraisal fees.

(3) FHA or VA application fee.

(4) Certification of structural soundness when required by the lender, FHA, or VA.

(5) Credit report.

(6) Title policies or abstract of title.

(7) Escrow agent's fee.

(8) State revenue stamps or sale or transfer taxes.

(b) An incidental expense which is part of a finance charge under the truth in Lending Act, Title I, Pub. L. 90-321, and Regulation "Z" (12 CFR Part 226) issued thereunder by the Board of Governors of the Federal Reserve System, may not be reimbursed.

§ 25.199 Computation of rental payments; tenants.

(a) Except as provided in § 25.202, the amount payable to a displaced tenant (other than a tenant of the agency concerned) for rent under §§ 25.185(a) or 25.185(b)(1) is 48 times the reasonable monthly rent for a comparable replacement dwelling, less 48 times the average month's rent paid by the displaced tenant for the last three months before initiation of negotiations for the acquired dwelling if that rent was reasonable, and if not reasonable, 48 times the monthly economic rent for the dwelling unit as established by the agency concerned.

(b) Except as provided in § 5.202, the amount payable to a displaced tenant of the agency concerned for rent under § 25.185(a) or § 25.185(b)(1) is 48 times the reasonable monthly rent for a comparable replacement dwelling, less 48 times the monthly economic rent.

§ 25.201 Computation of rental payments; homeowners.

Except as provided in § 25.202, the amount payable to a displaced homeowner for rent under §§ 25.185(a) or 25.185(b)(1) is 48 times the reasonable monthly rent for a comparable replacement dwelling, less 48 times the monthly economic rent.

§ 25.202 Limitation of rental payment.

(a) The rent established as the reasonable monthly rent under § 25.203 for a comparable replacement dwelling sets the upper limit of the differential amount payable under §§ 25.199 and 25.201. To qualify for any amount, the displaced homeowner or tenant must rent and occupy a decent, safe, and sanitary dwelling higher in rent than the rent or economic rent at the acquired dwelling.

(b) If the displaced homeowner or tenant voluntarily rents and occupies a decent, safe, and sanitary dwelling at a rent less than the reasonable monthly rent established for a comparable replacement dwelling, the amount payable under §§ 25.199 and 25.201 is that amount required to pay the difference between 48 times the average monthly rent or economic rent at the acquired dwelling and 48 times the actual monthly rent paid for the decent, safe, and sanitary dwelling.

§ 25.203 Determining reasonable monthly rent.

In determining the reasonable monthly rent for a comparable replacement dwelling for the purposes of §§ 25.199 and 25.201, the agency concerned shall use one of the following methods:

(a) It may establish a schedule of monthly rents for each type of dwelling required. The schedule must be based on a current analysis of the available private market. If more than one agency is administering a project causing displacement in the area, it shall cooperate with those agencies in establishing a uniform schedule for the area.

(1) It may determine a reasonable monthly rent by examining the rent of at least three comparable replacement dwellings.

(2) If it finds that the methods described in paragraphs (a) (1) and (2) of this section are not feasible, it may propose what it considers to be a feasible method to the appropriate DOT official for approval.

§ 25.205 Rental payments; method of payment.

A rental payment under § 25.185(a) must be made in installments if requested by the displaced person.

§ 25.207 Computation of down payments.

The amount payable to a displaced homeowner or tenant for a down payment and incidental expenses under § 25.185(b) (2) is the full amount of the first $2,000 of the required down payment and incidental expenses plus one half of any amount required over $2,000. However, the homeowner or tenant shall provide the other half of any amount required over $2,000.

§ 25.209 Down payments.

(a) The amount payable to a displaced homeowner or tenant under § 25.207 sets the upper limits of the down payment under § 25.185(b)(2) and shall be the required down payment for financing a conventional loan on a comparable dwelling or the re-

quired down payment for financing the conventional loan on the replacement dwelling actually purchased whichever is less.

(b) A displaced homeowner or tenant shall apply the full amount of the payment to which he is entitled under § 25.185(b)(2) to the down payment and the incidental expenses described in the closing statement.

§ 25.211 Provisional payment pending condemnation.

If the exact amount of a replacement housing payment cannot be determined because of a pending condemnation suit, the agency concerned may make a provisional replacement housing payment to the displaced homeowner equal to the difference between the agency's maximum offer for the property and the reasonable cost of a comparable replacement dwelling, but only if the homeowner enters into an agreement with the agency that—

(a) Upon final adjudication of the condemnation suit the replacement housing payment will be recomputed on the basis of the acquisition price determined by the court;

(b) If the acquisition price as determined by the court is greater than the agency's maximum offer upon which the provisional replacement housing payment is based, the difference will be refunded to the agency; and

(c) If the acquisition price as determined by the court is less than the agency's maximum offer upon which the provisional replacement housing payment is based, the difference will be paid to the homeowner.

§ 25.213 Combined payments.

(a) If a homeowner is eligible for payment under § 25.183, but has previously received a rental payment under § 25.185(a), the amount of rental payment previously received must be deducted from any amount that he receives under § 25.183.

(b) If a homeowner or tenant is eligible for a down payment under § 25.185 (b), but has previously received a rental payment under § 25.185(a), the amount of rental payment previously received shall be deducted from the amount of any down payment that he receives under § 25.185(b).

§ 25.215 Partial use of home for business or farm operation.

(a) In the case of a displaced homeowner or tenant who has allocated part of his dwelling for use in connection with a displaced business or farm operation, a replacement housing payment may not be paid for that part of the property which is allocated to the business or farm operation.

(b) The eligibility of a homeowner or tenant to receive a payment under § 25.121 is not affected by this section.

§ 25.217 Multiple occupants of a single dwelling.

(a) Where two or more individuals, families, or combination thereof occupy an acquired dwelling, the replacement housing payment is based on the cost of a single comparable replacement dwelling.

(b) If a single replacement dwelling which meets the requirements of § 25.15(a) (1)-(7) is not available on the market, then the replacement housing payment may be based on the cost of more than one comparable replacement dwelling.

(c) The appropriate DOT official shall establish criteria to implement this section.

§ 25.219 Multi-family dwelling.

In the case of a displaced homeowner who is required to move from a one-family unit of a multi-family building which he owns, the replacement housing payment must be based on—

(a) The cost of a comparable one-family unit in a multi-family building without regard for the number of units in the building being acquired; or

(b) If a comparable one-family unit in a multi-family building is not available, the cost of a single-family structure.

§ 25.221 Certificate of eligibility pending purchase of replacement dwelling.

Upon request by a displaced homeowner or tenant who has not yet purchased and occupied a decent, safe, and sanitary replacement dwelling, but who is otherwise eligible for a replacement housing payment under this subpart, the agency concerned

shall certify to any interested party, financial institution, or lending agency, that the displaced homeowner or tenant will be eligible for the payment of a specific sum if he purchases and occupies a decent, safe, and sanitary dwelling within the time limits prescribed by § 25.181 (a)(3), (b)(3), or (c)(3), as the case may be.

Subpart H—Relocation Assistance Functions Carried Out Through Other Agencies

§ 25.231 Authority to carry out relocation assistance through other agencies.

(a) To prevent unnecessary expenses and duplication of activities, an agency concerned that is required to provide relocation services or make relocation payments under this part may carry out any of those functions through the facilities, personnel, and services of the central relocation agency for the area in which the project is located. The appropriate regional area office of the Department of Housing and Urban Development will provide information concerning the services furnished by that agency. (See 39 FR 37374 for a listing of the area offices.)

(b) The agency concerned may carry out its relocation assistance program by contracting with a public or private agency having an established organization for providing relocation services and payments other than the central relocation agency, if—

(1) There is no central relocation agency in the area in which the project is located; or

(2) In the opinion of the agency concerned, the central relocation agency does not have the capacity to furnish the requisite relocation program within the time required by the project's schedule.

§ 25.233 Information to be furnished to DOT.

If an agency concerned elects to provide relocation services or make relocation payments through another agency, the agency shall furnish the appropriate DOT official with the following information concerning the other agency:

(a) The name and location of the agency.

(b) An analysis of the agency's present workload and of its ability to perform the requirements of this subpart.

(c) The estimated number and the job titles of relocation personnel of the agency that will provide the relocation assistance for the project.

§ 25.235 Interagency agreement required.

If an agency concerned elects to provide relocation services or make relocation payments through another agency, it shall enter into a written agreement with that agency. The agreement must be approved by the appropriate DOT official and contain the following:

(a) An obligation on the part of the other agency to perform the services and make the relocation payments in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and this part.

(b) A requirement that the records required by § 25.23 be retained by the other agency or turned over to the agency concerned and that they be retained for a period of at least 3 years after payment of the final voucher on each project, regardless of which agency retains them.

(c) A requirement that the records required by § 25.23 be available for inspection by representatives of the Department of Transportation at any reasonable business hour.

(d) If the contract is with a public agency administering another Federal or Federally-assisted program, a description of the financial responsibilities of each program to finance the relocation program required by this part.

(e) A provision acknowledging that only those costs directly chargeable to the Federal or Federally-assisted project are eligible for Federal funds.

(f) A provision for negotiation of major changes that become necessary in the scope, character, or estimated total cost of the work to be performed.

§ 25.237 Amendment of existing agreements required.

Each agreement between an agency concerned and another agency for carrying out relocation assistance func-

tions through the other agency that is in effect on June 1, 1971, shall be amended or supplemented as necessary to include the requirements of § 25.235. The agency concerned shall furnish the appropriate DOT official with a copy of the amended agreement or the existing agreement and the supplement, as the case may be.

Subpart I—Acquisition of Real Property

§ 25.251 Scope.

This subpart prescribes requirements for the acquisition of real property in a Federal or Federally-assisted program administered by the Department of Transportation.

§ 25.253 Real property acquisition practices.

(a) In acquiring real property, each agency concerned shall to the greatest extent practicable—

(1) Make every reasonable effort to acquire real property expeditiously through negotiation;

(2) Before the initiation of negotiations have the real property appraised and give the owner or his representative an opportunity to accompany the appraiser during inspection of the property;

(3) Before the initiation of negotiations establish an amount which it believes to be just compensation for the real property and make a prompt offer to acquire the property for that amount;

(4) Before requiring any owner to surrender possession of real property—

(i) Pay the agreed purchase price;

(ii) Deposit with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of the property; or

(iii) Pay the amount of the award of compensation in a condemnation proceeding for the property;

(5) If any interest in real property is to be acquired by exercise of the power of eminent domain, institute formal condemnation proceedings and not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property; and

(6) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, offer to acquire that remnant.

(b) In acquiring real property, to the greatest extent practicable an agency may not—

(1) Schedule the construction or development of a public improvement that will require any person lawfully occupying real property to move from a dwelling, or to move his business or farm operation, without giving that person at least 90 days' written notice of the date he is required to move.

(2) If it rents acquired real property to the former owner or tenant for short term or subject to termination by the agency on short notice, charge rent that is more than the fair rental value of the property to a short-term occupier;

(3) Compel an agreement on the price to be paid for the property by—

(i) Advancing the time of condemnation;

(ii) Deferring negotiations, condemnation, or the deposit of funds in court for use of the owner; or

(iii) Taking any other coercive action.

(c) For purposes of paragraph (a)(4)(ii) and (b)(3)(ii) of this section, the word court includes any board, commission or similar body.

§ 25.255 Statement of just compensation to owner.

At the time it makes an offer to purchase real property, the agency concerned shall provide the owner of that property with a written statement of the basis for the amount estimated to be just compensation. To the greatest extent practicable, the statement must include the following:

(a) An identification of the real property and the particular interest being acquired.

(b) A certification, where applicable, that any separately held interest in the real property is not being acquired in whole or in part.

(c) An identification of buildings, structures, and other improvements, including fixtures, removable building

equipment, and any trade fixtures which are considered to be part of the real property for which the offer of just compensation is made.

(d) A declaration that the agency's determination of just compensation—

(1) Is based on the fair market value of the property;

(2) Is not less than the agency's approved appraised value of the property;

(3) Disregards any decrease or increase in the fair market value caused by the project for which the property is being acquired; and

(4) In the case of separately held interests in the real property, includes an apportionment of the total just compensation for each of those interests.

(e) In the case of partial taking, the amount of damages, if any, to the remaining real property.

§ 25.257 Equal interest in improvements to be acquired.

In acquiring any interest in real property each agency concerned shall acquire at least an equal interest in all buildings, structures, or other improvements located on that real property which will be removed or which will be adversely affected by the completed project.

§ 25.259 Payments to tenants for improvements.

(a) In the case of a building, structure, or other improvement owned by a tenant on the real property acquired for a project to which this part applies, the agency concerned shall, subject to paragraph (b) of this section, pay the tenant the larger of—

(1) The fair market value that the building, structure, or other improvement contributes to the fair market value of the real property acquired; or

(2) The fair market value of the building, structure, or other improvement, assuming its removal from the property.

(b) A payment may not be made to a tenant under paragraph (a) of this section unless—

(1) The tenant, in consideration for the payment, assigns, transfers, and releases to the agency concerned all his right, title, and interest in the improvement;

(2) The owner of the land involved disclaims all interest in the improvement; and

(3) The payment is not duplicated by any payment otherwise authorized by law.

(c) Nothing in this section shall be construed to deprive the tenant of any rights to reject payment under this section and to obtain payment as otherwise authorized by law.

§ 25.260 Criteria for appraisals.

(a) The appropriate DOT official shall establish—

(1) Criteria for determining the qualifications of appraisers;

(2) Criteria for a system of review by qualified appraisers; and

(3) Standards for appraisals consistent with the "Uniform Appraisal Standards for Federal Land Acquisition" (1972 edition, published by the Interagency Land Acquisition Conference).

(b) The publication incorporated by reference in paragraph (a)(3) of this section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, for 35 cents. Requests for copies should refer to Stock No. 5259-0002. A copy may be examined in the Office of the General Counsel, Room 10100, Department of Transportation, 7th and D Streets SW., Washington, D.C.

§ 25.261 Expenses incidental to transfer of title.

As soon as possible after real property has been acquired, the agency concerned shall, to the extent it deems fair and reasonable, reimburse the owner for expenses necessarily incurred for—

(a) Recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the agency;

(b) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(c) The pro rata portion of any prepaid real property taxes which are al-

locable to a period subsequent to the date of vesting title in the agency or the effective date of possession of the real property by the agency, whichever is the earlier.

§ 25.263 Litigation expenses.

(a) In any condemnation proceeding brought by the agency concerned to acquire real property, it shall reimburse the owner of any right, title, or interest in the real property for his reasonable costs, disbursements, and expenses, including attorney, appraisal, and engineering fees, actually incurred because of the proceeding, if—

(1) The final judgment is that the agency concerned cannot acquire the real property by condemnation; or

(2) The proceeding is abandoned by the agency concerned.

(b) In any inverse condemnation proceeding where the owner of any right, title, or interest in real property receives an award of compensation by judgment or settlement, the agency concerned shall reimburse the plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the proceeding.

§ 25.265 Allowance for benefits prohibited.

No allowance for benefits provided by this part may be included in—

(a) Contracts or options to purchase real property;

(b) The appraised value of real property; and

(c) Estimated compensation in the event of condemnation with a declaration of taking.

§ 25.267 Cost of replacing publicly-owned property.

(a) When publicly-owned property used for public purposes is acquired for a project to which this part applies, the cost of replacing that property (including any improvement thereon) may be included in the cost of the project, if the appropriate DOT official finds that:

(1) The State agency has determined that the replacement of this property is in the public interest;

(2) The replacement property substantially has the same functional utility as the property acquired for the project; and

(3) The replacement cost will be actually incurred.

(b) As used in paragraph (a) of this section, "replacement" includes—

(1) The acquisition or construction of property similar to the acquired property; or

(2) The addition or modification of other property to provide for functionally equivalent public use.

APPENDIX A

NOTE: The tables appearing in Appendix A are updated semiannually. For revisions, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

PART 27—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

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AUTHORITY: Sec. 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; section 16(a) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1612(a); section 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. 142 nt.

SOURCE: 44 FR 31468, May 31, 1979, unless otherwise noted.

Subpart A—General

§ 27.1 Purpose.

The purpose of this part is to carry out the intent of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, to the end that no otherwise qualified handicapped individual in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 27.3 Applicability.

This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives or benefits from such assistance.

§ 27.5 Definitions.

As used in this part:

"Accessible" means (a) with respect to new facilities: (1) Conforming to the minimum standards of the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," (ANSI A 117.1—1961 (R 1971) published by ANSI, Inc. ("ANSI Standards"),* with respect to buildings and other fixed facilities to which ANSI standards are applicable; and (2) with respect to vehicles, other moving conveyances, or fixed facilities to which the ANSI standards do not apply, able to be entered and used by a handicapped person; (b) with respect to existing facilities, able to be entered and used by a handicapped person.

"Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended.

"Air Carrier Airport" means an airport serviced by a certificated air carrier unless such airport is served solely by an air carrier which provides: (1) Passenger service at that airport in aircraft having a maximum passenger capacity of less than 56 passengers, or (2) cargo service in air transportation at that airport solely with aircraft having a maximum payload capacity of less than 18,000 pounds; provided, however, that if at any such airport, Federal funds are made available for terminal facilities, it shall be deemed to be an air carrier airport.

"Applicant" means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

"Closed station" means a station at which no services are provided to passengers by station attendants and at which trains make regularly scheduled stops.

"Department" means the Department of Transportation.

"Discrimination" means denying handicapped persons the opportunity to participate in or benefit from any program or activity receiving Federal financial assistance.

*Copies available from ANSI, Inc., 1430 Broadway, New York, N.Y. 10018.

"Facility" means all or any portion of buildings, structures, vehicles, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

"Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real or personal property or any interest in, or use of such property, including:

(1) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

"Flag stop" means any station which is not a regularly scheduled stop but at which trains will stop to entrain or detrain passengers only on signal or advance notice.

"Handicapped person" means (1) any person who (a) has a physical or mental impairment that substantially limits one or more major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment. (2) As used in this definition, the phrase:

(a) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular, reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; mental retardation; emotional illness; drug addiction; and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) "Has a record of such an impairment" means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in paragraph (1) of this definition, but is treated by a recipient as having such an impairment.

"Head of Operating Administration" means the head of an operating administration within the Department (United States Coast Guard, Federal Highway Administration, Federal Aviation Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Administration, and Research and Special Programs Administration) providing Federal financial assistance to the recipient.

"Mass transportation" or "public transportation" means transportation by bus, or rail, or other conveyance, either publicly or privately owned, which provides to the public general or special service (but not including school buses or charter or sightseeing service) on a regular and continuing basis.

"Open station" means a station at which passengers may make reservations and purchase tickets and where passenger assistance is available for entraining and detraining passengers on trains which make regularly scheduled stops.

"Passenger" means anyone, except a working crew member, who travels on a vehicle the service of which is governed by these regulations.

"Primary recipient" means any recipient that is authorized or required to extend Federal financial assistance from the Department to another recipient for the purpose of carrying out a program.

"Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation and within normal safety requirements, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such person from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; and

(2) With respect to other activities, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

"Recipient" means any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, organization, or other entity, or any individual in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance from the Department is extended directly or through another recipient, for any Federal program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

"Secretary" means the Secretary of Transportation.

"Section 504" means section 504 of the Act.

"Urbanized area" means an area so designated by the Bureau of Census, within boundaries which shall be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary, and which shall at a minimum, in case of any such area, encompass the entire urbanized area within a State as designated by the Bureau of Census.

[44 FR 31468, May 31, 1979, as amended at 46 FR 37492, July 20, 1981]

§ 27.7 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance administered by the Department of Transportation.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not substantially equal to that afforded persons who are not handicapped;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as persons who are not handicapped;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits or services that are as effective as those provided to persons who are not handicapped;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing financial or other assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate

in conferences, in planning or advising recipients, applicants or would-be applicants, or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting that is reasonably achievable.

(3) Even if separate or different programs or activities are available to handicapped persons, a recipient may not deny a qualified handicapped person the opportunity to participate in the programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially reducing the likelihood that handicapped persons can benefit by the objectives of the recipient's program, or (iii) that yield or perpetuate discrimination against another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant or a recipient may not make selections: (i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance, or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid benefit, or service provided under a program or activity receiving or benefitting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Communications.* Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(d) *Programs limited by Federal law.* In programs authorized by Federal statute or executive order that are designed especially for the handicapped, or for a particular class of handicapped persons, the exclusion of nonhandicapped or other classes of handicapped persons is not prohibited by this part.

§ 27.9 Assurance required.

(a) *General.* Each application for Federal financial assistance to carry out a program to which this part applies, and each application to provide a facility, shall, as a condition to approval or extension of any Federal financial assistance pursuant to the application, contain, or be accompanied by, written assurance that the program will be conducted or the facility operated in compliance with all the requirements imposed by or pursuant to this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Future Effect of Assurances.* Recipients of Federal financial assistance, and transferees of property obtained by a recipient with the participation of Federal financial assistance, are bound by the recipient's assurance under the following circumstances:

(1) When Federal financial assistance is provided in the form of a conveyance of real property or an interest in real property from the Department of Transportation to a recipient, the instrument of conveyance shall include a convenant running with the land binding the recipient and subsequent transferees to comply with the requirements of this part for so long

as the property is used for the purpose for which the Federal financial assistance was provided or for a similar purpose.

(2) When Federal financial assistance is used by a recipient to purchase or improve real property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part and require any subsequent transferee of the property, who is using the property for the purpose for which the Federal financial assistance was provided, to agree in writing to comply with the requirements of this part. The obligations of the recipient and transferees under this part shall continue in effect for as long as the property is used for the purpose for which Federal financial assistance was provided or for a similar purpose.

(3) When Federal financial assistance is provided to the recipient in the form of, or is used by the recipient to obtain, personal property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part for the period it retains ownership or possession of the property or the property is used by a transferee for purposes directly related to the operations of the recipient.

(4) When Federal financial assistance is used by a recipient for purposes other than to obtain property, the assurance provided shall obligate the recipient to comply with the requirements of this part for the period during which the Federal financial assistance is extended to the program.

§ 27.11 Remedial action, voluntary action and compliance planning.

(a) *Remedial action.* (1) If the responsible Departmental official finds that a qualified handicapped person has been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any program or activity in violation of this part, the recipient shall take such remedial action as the responsible Departmental official deems necessary to overcome the effects of the violation.

(2) Where a recipient is found to have violated this part, and where another recipient exercises control over the recipient that has violated this part, the responsible Departmental official, where appropriate, may require either or both recipients to take remedial action.

(3) The responsible Departmental official may, where necessary to overcome the effects of a violation of this part, require a recipient to take remedial action: (i) With respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred, and (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to assure the full participation in the recipient's program or activity by qualified handicapped persons.

(c) *Compliance planning.* (1) A recipient shall, within 90 days from the effective date of this part, designate and forward to the head of any operating administration providing financial assistance, with a copy to the responsible Departmental official the names, addresses, and telephone numbers of the persons responsible for evaluating the recipient's compliance with this part.

(2) A recipient shall, within 180 days from the effective date of this part, after consultation at each step in paragraphs (c)(2) (i)–(iii) of this section with interested persons, including handicapped persons and organizations representing the handicapped:

(i) Evaluate its current policies and practices for implementing these regulations, and notify the head of the operating administration of the completion of this evaluation;

(ii) Identify shortcomings in compliance and describe the methods used to remedy them;

(iii) Begin to modify, with official approval of recipient's management, any policies or practices that do not meet the requirements of this part according to a schedule or sequence that includes milestones or measures of achievement. These modifications shall be completed within one year from the effective date of this part;

(iv) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices; and

(v) Establish a system for periodically reviewing and updating the evaluation.

(3) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(2) of this section, maintain on file, make available for public inspection, and furnish upon request to the head of the operating administration:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems indentified; and

(iii) A description of any modifications made and of any remedial steps taken.

§ 27.13 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient that employs fifteen or more persons shall, within 90 days of the effective date of this regulation, forward to the head of the operating administration that provides financial assistance to the recipient, with a copy to the responsible Departmental official, the name, address, and telephone number of at least one person designated to coordinate its efforts to comply with this part. Each such recipient shall inform the head of the operating administration of any subsequent change.

(b) *Adoption of complaint procedures.* A recipient that employs fifteen or more persons shall, within 180 days, adopt and file with the head of the operating administration procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

§ 27.15 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated pursuant to § 27.13(a). A recipient shall make the initial notification required by this section within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications. In either case, the addition or revision must be specially noted.

§ 27.17 Effect of State or local law.

The obligation to comply with this part is not obviated or affected by any State or local law.

§§ 27.19–27.29 [Reserved]

Subpart B—Employment Practices

§ 27.31 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped applicant for employment, or an employee shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal financial assistance.

(2) A recipient shall make all decisions concerning employment under

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any program or activity to which this part applies in a manner assuring that discrimination on the basis of handicap does not occur. A recipient may not limit, segregate, or classify applicants for employment or employees in any way that adversely affects their opportunities or status on the basis of handicap. This part does not prohibit the consideration of handicap in decisions affecting employment if the purpose and effect of the consideration is to remove or overcome impediments or the present effects of past impediments to the employment of handicapped persons.

(3) A recipient may not enter a contractual or other relationship that subjects qualified handicapped applicants for employment or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, or with organizations providing training and apprenticeship programs.

(b) *Specific Activities.* A recipient shall not discriminate on the basis of handicap in:

(1) Recruiting, advertising, and processing of applications for employment;

(2) Hiring, upgrading, promoting, awarding tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer-sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 27.33 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known handicaps of an otherwise qualified applicant for employment or employee unless the recipient can demonstrate to the responsible Departmental official that the accommodation would impose an undue hardship on the operations of its program.

(b) Reasonable accommodation includes (but is not limited to):

(1) Making facilities used by employees readily accessible to and usable by handicapped persons;

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment, and similar actions; and

(3) The assignment of an employee who becomes handicapped and unable to perform his/her original duties to an alternative position with comparable pay.

(c) In determining, pursuant to paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program, including number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce;

(3) The nature and cost of the accommodation needed; and

(4) Its effect on program accomplishments, including safety.

(d) A recipient shall not deny any employment opportunity to a qualified handicapped employee or applicant for employment if the basis for the denial is the need to make reasonable accommodations to the handicaps of the employee or applicant.

§ 27.35 Employment criteria.

(a) A recipient shall not make use of an employment test or other selection criterion that has an adverse impact or tends to have an adverse impact on handicapped persons, unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not have an adverse impact or do not tend to have an adverse impact on handicapped persons are shown by the recipient to be unavailable.

(b) A recipient shall select and administer tests that, when administered to an applicant for employment or an employee with impaired sensory, manual, or speaking skills, nonetheless accurately measure what they purport to measure.

§ 27.37 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient shall not conduct a preemployment medical examination or inquiry as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment medical examinations that are required by Federal law or regulation or inquiries into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action pursuant to § 27.11 (a) or (c), or when a recipient is taking affirmative action pursuant to section 505 of the Act (which relates to government procurement), the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient makes clear that the information requested is intended for use solely in connection with the remedial action obligations or its voluntary or affirmative actions efforts; and

(2) The recipient makes clear that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section prohibits a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, if:

(1) All entering employees in that category of job classification must take such an examination regardless of whether or not they are handicapped; and

(2) The results of such an examination are used only in accordance with this part.

(d) Information obtained in accordance with this section shall be collected and maintained on separate forms and treated confidentially, except that:

(1) Supervisors and managers may be informed of restrictions on the work or duties of handicapped persons and necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request, consistent with the Privacy Act of 1974, 5 USC 552a.

§§ 27.39–27.59 [Reserved]

Subpart C—Program Accessibility—General

§ 27.61 Applicability.

This subpart applies to all programs of the Department of Transportation to which section 504 is applicable. Additional provisions with respect to certain specific programs of the Department are set forth in Subpart D. The provisions of this subpart should be interpreted in a manner that will make them consistent with the provisions of Subpart D. In the case of apparent conflict, the provisions of Subpart D shall prevail.

[44 FR 31468, May 31, 1979, as amended at 46 FR 37492, July 20, 1981]

§ 27.63 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities

are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 27.65 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that, when viewed in the entirety, it is accessible to handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, alteration of existing facilities and construction of new facilities in accordance with the requirements of § 27.67(d) or any other methods that result in making its program or activity accessible to handicapped persons. In choosing among available methods for meeting the requirements of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Structural changes.* Where structural changes are necessary to make programs or activities in existing facilities meet the requirements of paragraph (a) of this section, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this regulation unless otherwise provided in Subpart D.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirements of paragraph (a) of this section, a recipient shall develop, and submit in duplicate to the cognizant operating administration providing Federal financial assistance, within one year of the effective date of this part, a transition plan listing the facilities and setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan and a list of the interested persons and organizations consulted shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify each facility required to be modified by this part. Facilities shall be listed even though the recipient contemplates requesting a waiver of the requirement to modify the facility;

(2) Identify physical obstacles in the listed facilities that limit the accessibility of its program or activity to handicapped persons;

(3) Describe the methods that will be used to make the listed facilities accessible;

(4) Describe how and the extent to which the surrounding areas will be made accessible;

(5) Specify the schedule for taking the steps necessary to achieve overall program accessibility and, if the time period of the transition plan is longer than three years, identify steps that will be taken during each year of the transition period; and

(6) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

[44 FR 31468, May 31, 1979, as amended at 46 FR 37492, July 20, 1981]

§ 27.67 New facilities and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed, constructed, and operated in a manner so that the facility or part of the facility is accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part; with respect to vehicles, unless otherwise provided in Subpart D, this requirement is effective for vehicles for which solicitations are issued or

which are leased after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the accessibility of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) When an existing vehicle is renovated substantially to prolong its life, the vehicle shall, to the maximum extent feasible, meet the requirements for a comparable new vehicle. Lesser renovations shall incorporate accessibility features for a comparable new vehicle when practicable and justified by the remaining life expectancy of the vehicle.

(d) *ANSI standards.* Design, construction or alteration of fixed facilities in paragraphs (a) and (b) of this section shall be in accordance with the minimum standards in the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by ANSI, Inc. (ANSI A117.1-1961 (R1971)), which is incorporated by reference in this part. Departures from particular requirements of these standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

[44 FR 31468, May 31, 1979, as amended at 46 FR 37492, July 20, 1981]

§ 27.69 [Reserved]

Subpart D—Program Accessibility Requirements in Specific Operating Administration Programs: Airports, Railroads, Highways and Mass Transit

§ 27.71 Federal Aviation Administration—Airports.

(a) *Fixed facilities; New terminals*—(1) Terminal facilities designed and constructed by or for the use of a recipient of Federal financial assistance on or after the effective date of this part, the intended use of which will require it to be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed or constructed in accordance with the ANSI standards. Where there is ambiguity or contradiction between the definitions and the standards used by ANSI and the definitions and standards used in paragraph (a)(2) of this section, the ANSI terms should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(2) of this section. If this cannot be done, the standards in paragraph (a)(2) of this section prevail.

(2) In addition to the ANSI standards, the following standards apply to new airport terminal facilities:

(i) *Airport terminal circulation and flow.* The basic terminal design shall permit efficient entrance and movement of handicapped persons while at the same time giving consideration to their convenience, comfort, and safety. It is also essential that the design, especially concerning the location of elevators, escalators, and similar devices, minimize any extra distance that wheel chair users must travel compared to nonhandicapped persons, to reach ticket counters, waiting areas, baggage handling areas, and boarding locations.

(ii) *International accessibility symbol.* The international accessibility symbol shall be displayed at accessible entrances to buildings that meet the ANSI standards.

(iii) *Ticketing.* The ticketing system shall be designed to provide handicapped persons with the opportunity to use the primary fare collection area to obtain ticket issuance and make fare payment.

(iv) *Baggage check-in and retrieval.* Baggage areas shall be accessible to handicapped persons. The facility shall be designed to provide for efficient handling and retrieval of baggage by all persons.

(v) *Boarding.* Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided for enplaning and deplaning handicapped persons. Boarding by jetways and by passenger

lounges are the preferred methods for movement of handicapped persons between terminal buildings and aircraft at air carrier airports; however, where this is not practicable, operators at air carrier airport terminals shall assure that there are lifts, ramps, or other suitable devices not normally used for movement of freight that are available for enplaning and deplaning wheelchair users.

(vi) *Telephones.* Wherever there are public telephone centers in terminals, at least one clearly marked telephone shall be equipped with a volume control or sound booster device and with a device available to handicapped persons that makes telephone communication possible for persons wearing hearing aids.

(vii) *Teletypewriter.* Each airport shall ensure that there is sufficient teletypewriter (TTY) service to permit hearing-impaired persons to communicate readily with airline ticket agents and other personnel.

(viii) *Vehicular loading and unloading areas.* Several spaces adjacent to the terminal building entrance, separated from the main flow of traffic, and clearly marked, shall be made available for the loading and unloading of handicapped passengers from motor vehicles. The spaces shall allow individuals in wheelchairs or with braces or crutches to get in and out of automobiles onto a level surface suitable for wheeling and walking.

(ix) *Parking.* In addition to the requirements in the ANSI standards the following requirements shall be met:

(A) Curb cuts or ramps with grades not exceeding 8.33 percent shall be provided at crosswalks between park areas and the terminal;

(B) Where multi-level parking is provided, ample and clearly marked space shall be reserved for ambulatory and semi-ambulatory handicapped persons on the level nearest the ticketing and boarding portion of the terminal facilities, and

(C) In multi-level parking areas, elevators, ramps, or other devices that can accommodate wheelchair users shall be easily available.

(x) *Waiting area/public space.* As the major public area of the airport terminal facility, the environment in the waiting area/public space should give the handicapped person confidence and security in using the facility. The space shall be designed to accommodate the handicapped providing clear direction about how to use all passenger facilities.

(xi) *Airport terminal information.* Airport terminal information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words and letters, or symbols, using lighting and color coding. Airport terminals shall also have facilities providing information orally.

(xii) *Public services.* Public service facilities such as public toilets, drinking fountains, telephones, travelers aid and first aid medical facilities shall be designed in accordance with ANSI standards.

(b) *Fixed facilities; existing terminals*—(1) *Structural changes.* Where structural changes are necessary to make existing air carrier terminals which are owned and operated by recipients of Federal financial assistance accessible to and usable by handicapped persons, such changes shall be made in accordance with the ANSI standards as soon as practicable, but in no event later than three years after the effective date of this part.

(2) *Ongoing renovation.* In terminals that are undergoing structural changes involving entrances, exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephones, eating places, curbs, and parking areas, recipients shall begin immediately to incorporate accessibility features.

(3) *Transition.* Where extensive structural changes to existing facilities are necessary to meet accessibility requirements, recipients shall develop a transition plan in accordance with § 27.65(d) and submit it to the Federal Aviation Administration (FAA). Transition plans are reviewed and approved or disapproved by the FAA as expeditiously as possible after they are received.

(4) *Boarding.* Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided incident to enplaning and deplaning handicapped

persons. Within three years from the effective date of this part, recipients operating terminals at air carrier airports that are not equipped with jetways or passenger lounges for boarding and unboarding shall assure that there are lifts, ramps, or other suitable devices, not normally used for movement of freight, are available for enplaning and deplaning wheelchair users.

(5) *Passenger services.* Recipients operating terminals at air carrier airports shall assure that there are provisions for assisting handicapped passengers upon request in movement into, out of, and within the terminal, and in the use of terminal facilities, including baggage handling.

(6) *Guide dogs.* Seeing eye and hearing guide dogs shall be permitted to accompany their owners and shall be accorded all the privileges of the passengers whom they accompany in regard to access to terminals and facilities.

§ 27.73 Federal Railroad Administration—Railroads.

(a) *Fixed facilities*—(1) *New facilities.* (i) Every fixed facility or part of a facility—including every station, terminal, building, or other facility—designed or constructed by or for the use of a recipient of Federal financial assistance on or after the effective date of this part, the intended use of which will require it to be accessible to the public or may result in the employment therein of physically handicapped persons, shall be designed and constructed in accordance with the ANSI standards. Where there is ambiguity or contradiction between the definitions and the standards used by ANSI and the definitions and standards used in paragraph (a)(1)(ii) of this section, the ANSI terms should be interpreted in a manner that will make them consistent with the standards in paragraph (a)(1)(ii) of this section. If this cannot be done, the standards in paragraph (a)(1)(ii) of this section will prevail.

(ii) In addition to the ANSI standards the following standards also apply to rail facilities;

(A) *Station circulation and flow.* The basic station design shall permit efficient entrance and movement of handicapped persons while at the same time giving consideration to their convenience, comfort, and safety. The design, especially concerning the location of elevators, escalators, and similar devices, shall minimize any extra distance that wheelchair users must travel, compared to nonhandicapped persons, to such ticket counters, baggage handling areas and boarding locations.

(B) *International accessibility symbol.* The international accessibility symbol shall be displayed at accessible entrances to buildings that meet ANSI standards.

(C) *Ticketing.* The ticketing system shall be designed to provide handicapped persons with the opportunity to use the primary fare collection area to obtain ticket issuance and make fare payment.

(D) *Baggage check-in and retrieval.* Baggage areas shall be accessible to handicapped persons. The facility shall be designed to provide for efficient handling and retrieval of baggage by all persons.

(E) *Boarding platforms.* All boarding platforms that are located more than two feet above ground or present any other dangerous condition, shall be marked with a warning device consisting of a string of floor material differing in color and texture from the remaining floor surface. The design of boarding platforms shall be coordinated with the vehicle design where possible in order to minimize the gap between platform and vehicle doorway and to permit safe passage by wheelchair users and other handicapped persons. Where level entry boarding is not provided, lifts, ramps or other suitable devices shall be available to permit boarding by wheelchair users.

(F) *Telephones.* At least one clearly marked telephone shall be equipped with a volume control or sound booster device and with a device available to handicapped persons that makes telephone communication possible for persons wearing hearing aids.

(G) *Teletypewriter.* Recipients shall make available a toll-free reservation and information number with teletypewriter (TTY) capabilities, to permit hearing-impaired persons using

TTY equipment to readily obtain information or make reservations for any services provided by a recipient.

(H) *Vehicular loading and unloading areas.* Several spaces adjacent to the terminal entrance separated from the main flow of traffic and clearly marked shall be made available for the boarding and exiting of handicapped persons. The spaces shall allow individuals in wheelchairs or with braces or crutches to get in and out of vehicles onto a level surface suitable for wheeling or walking.

(I) *Parking.* Where parking facilities are provided, at least two spaces shall be set aside and identified for the exclusive use of handicapped persons. Curb cuts or ramps with grades not exceeding 8.33 percent shall be provided at crosswalks between parking areas and the terminal. Where multilevel parking is provided, ample space which is clearly marked shall be reserved for handicapped persons with limited mobility on the level which is most accessible to the ticketing and boarding portion of the terminal facilities; such level change shall be by elevator, ramp, or by other devices which can accommodate wheelchair users.

(J) *Waiting area/public space.* As the major public area of the rail facility, the environment in the waiting area/public space should give the handicapped persons confidence and security in using the facility. The space shall be designed to accommodate the handicapped by providing clear directions about how to use all passenger facilities.

(K) *Station information.* Station information systems shall take into consideration the needs of handicapped persons. The primary information mode shall be visual words and letters or symbols using lighting and color coding. Stations shall also have facilities for giving information orally. Scheduling information shall be available in a tactile format or through the use of a toll-free telephone number.

(L) *Public services.* Public service facilities, such as public toilets, drinking fountains, telephones, travelers aid and first aid medical facilities, shall be designed in accordance with ANSI standards.

(2) *Existing facilities*—(i) *Ongoing renovation.* (i) All recipients shall begin immediately to incorporate accessibility features in stations and terminals that are already undergoing structural changes involving entrances and exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephones, eating places, boarding platforms, curbs, and parking garages.

(ii) *Structural changes.* Existing stations shall be modified to ensure that the facilities, when viewed in their entirety, are readily accessible to and usable by handicapped persons.

(iii) *Scheduling of structural changes.* (A) Within five years from the effective date of this section, recipients shall make accessible no less than one station in each Standard Metropolitan Statistical Area (SMSA) served by the recipient. Where there is more than one station in an SMSA, recipients shall select the station with the greatest annual passenger volume for modification within five years.

(B) Within ten years of the effective date of this section, recipients shall make accessible all other stations in each SMSA.

(C) Within five years of the effective date of this section, recipients shall make accessible stations located outside of an SMSA and not located within 50 highway miles of an accessible station. Where there are two or more stations within 50 highway miles of one another, a recipient shall select the station with the greatest annual passenger volume for modification within five years.

(D) Within ten years of the effective date of this section, recipients shall make accessible all other stations located outside of an SMSA.

(iv) *Waiver procedure.* (A) Recipients may petition the Federal Railroad Administrator for a waiver from the requirement to make a particular station accessible under § 27.73(a)(2)(iii) (B) and (D). Such petitions shall be submitted no later than six years after the effective date of this section.

(B) A request for a waiver shall be supported by a written justification to the Federal Railroad Administrator. The justification shall include a record

of a community consultative process in the area served by the station for which a waiver is sought. This request shall include a transcript of a public hearing. Handicapped persons and organizations in the area concerned shall be involved in the consultative process.

(C) Factors that are applicable to the determination on a petition for waiver and the conditions that would apply to the waiver include, but are not limited to: (*1*) The utilization of the station; (*2*) the cost of making modifications to the station; (*3*) and the availability of alternative, accessible means of transportation for handicapped persons that meet the needs of those persons for efficient and timely service at a fare comparable to rail fare from the area served by the station to the nearest accessible station in each direction of travel.

(D) Within 30 days of the date the waiver request is filed with the FRA, representatives of the FRA will meet with representatives of the Interstate Commerce Commission (ICC) to determine if the justification is adequate. The representatives will coordinate their efforts so that any changes requested by either FRA or ICC are consistent.

(E) If no agreement can be reached by the FRA and ICC on the adequacy of the justification within 60 days from the date the representatives first meet, the waiver request shall be denied.

(v) *Transition plan.* Where extensive changes to existing facilities are necessary to meet accessibility requirements, recipients shall develop a transition plan in accordance with § 27.65(d) and submit it, in duplicate, to the Federal Railroad Administration (FRA).

(vi) *Approval of transition plan.* (A) Transition plans are reviewed and approved or disapproved as expeditiously as possible after they are received. Within 30 days from the date the plan is filed with the FRA, representatives of the FRA meet with representatives of the ICC to determine if the plan is adequate. The representatives coordinate their efforts so that any changes requested by either the FRA or the ICC are consistent.

(B) If no agreement can be reached by the FRA and the ICC within 60 days from the date the representatives first meet, the transition plan shall be disapproved.

(vii) *Existing danger.* Every existing facility and piece of equipment shall be free of conditions which pose a danger to the life or safety of handicapped persons. Upon discovery of such conditions, the danger shall be immediately eliminated and all necessary steps taken to protect the handicapped, or a particular category of handicapped persons, from harm during the period that the facility or equipment is being made safe.

(b) *Rail vehicles.* (1) Within five years from the effective date of this part, on each passenger train:

(i) At least one coach car shall be accessible;

(ii) Where sleeping cars are provided, at least one sleeping car shall be accessible; and

(iii) At least one car in which food service is available shall be accessible to handicapped persons, or they shall be provided food service where they are seated.

In cases where the only accessible car is first class, first class seating for handicapped persons shall be provided at coach fare.

(2) In order for a passenger car to be accessible to handicapped persons, the following shall be available:

(i) Space to park and secure one or more wheelchairs to accommodate persons who wish to remain in their wheelchairs, and space to fold and store one or more wheelchairs to accommodate individuals who wish to sit in coach seats.

(ii) Accessible restrooms with wide doorways, bars to assist the individual in moving from wheelchair to toilet, low sinks, and other appropriate modifications. These restrooms should be large enough to accommodate wheelchairs.

(3) All new rail passenger vehicles for which solicitations are issued after the effective date of this part by recipients of Federal financial assistance shall be designed so as to be accessible to handicapped persons and shall dis-

play the international accessibility symbol at each entrance.

(c) *Rail passenger service.* (1) No recipient shall deny transportation to any person who meets the requirements of this regulation because that person cannot board a train without assistance, or use on-train facilities without assistance, except as provided in this regulation.

(2) Handicapped persons who require the assistance of an attendant shall not be denied transportation so long as they are accompanied by an attendant. Handicapped persons who require the service of an attendant, but who are unaccompanied, are not required under this part to be transported by the recipient. Handicapped persons requiring the assistance of an attendant shall include those who cannot take care of any one of their fundamental personal needs.

(3) All recipients at stations, except flag stops and closed stations, shall, on advance notice of 12 hours or more, provide assistance to handicapped persons, except that those handicapped persons who require the services of an attendant shall give advance notice of at least 24 hours. Such assistance shall include, but is not limited to, advance boarding and assisting handicapped persons in moving from station platform onto the train and to a seat. The recipient shall provide the same assistance to handicapped persons as they leave the train or board another train in the process of changing trains. Recipients shall provide assistance upon request to handicapped persons in the use of station facilities and in the handling of baggage.

(4) In all open stations, there shall be prominently displayed a notice stating the location of the recipient's representative or agent who is responsible for providing assistance to handicapped persons. Recipients shall publish in their schedules a notice of those closed stations and flag stops at which assistance cannot be provided to handicapped persons.

(5) Assistance to handicapped persons in the use of on-train facilities shall be provided as follows:

(i) *General assistance.* Recipients shall provide assistance to handicapped persons in moving to and from accommodations, including assistance in moving to and from wheelchairs.

(ii) *Restroom facilities.* All recipients shall, upon request, provide assistance to handicapped persons needing assistance in gaining access to rest and washroom facilities.

(iii) *Sleeping car service.* All recipients on all trains where sleeping car service is provided shall, upon request, provide assistance in gaining access to the facilities on various accommodations, such as roomette, bedroom, or compartment.

(iv) *Dining and lounge car service.* Where dining cars, food service cars, or lounge cars are inaccessible to handicapped persons, all recipients shall, upon request, provide meal, beverage, and snack service to handicapped persons needing such service in their accommodations.

(6) *Assistance with wheelchairs, crutches, walkers, and canes.* All recipients shall provide coach or sleeping car space to store, and shall assist in storing, such orthopedic aids as wheelchairs, walkers, crutches, and canes. These orthopedic aids shall be stored on the same coach or sleeping car in which the handicapped person travels.

(7) *Notice of assistance available provided in the use of on-board facilities.* All recipients shall, on all coaches, sleeping cars, dining cars, food service cars, and lounge cars, permanently display a notice stating where and from whom assistance in the use of facilities of various cars may be obtained.

(8) *Bedridden and stretcher-bound passengers.* (i) Where equipment is designed or modified to accept bedridden or stretcher-bound passengers without unreasonable delay, the recipient shall provide assistance in the boarding of bedridden or stretcher-bound persons into sleeping quarters. Accessibility to coaches for these persons is not required.

(ii) Advance notification of 24 hours or more is mandatory in order to ensure provision of assistance to bedridden or stretcher-bound passengers. For the purpose of this section, assistance need not necessarily include placing the bedridden or stretcher-bound person into the compartment.

(9) *Passengers requiring life support equipment.* Recipients shall not be required to transport persons who are dependent upon life support equipment needing power from the vehicle.

(10) *Guide dogs.* Seeing eye dogs and hearing guide dogs shall be permitted to accompany their owners on all passenger trains, and shall be permitted in coach, sleeping, and dining cars.

(11) *Services to deaf and blind passengers.* Recipients shall provide assistance to deaf and/or blind passengers, on request, by advising them of station stops.

(12) Recipients shall notify the public that they provide services that facilitate travel by handicapped persons.

(13) Recipients shall provide training to their employees sufficient to enable them to carry out the recipients' responsibilities under this section.

§ 27.75 Federal Highway Administration—Highways.

(a) New Facilities—(1) *Highway rest area facilities.* All such facilities that will be constructed with Federal financial assistance shall be designed and constructed in accordance with the ANSI standards.

(2) *Curb cuts.* All pedestrian crosswalks constructed with Federal financial assistance shall have curb cuts or ramps to accommodate persons in wheelchairs, pursuant to section 228 of the Federal-Aid Highway Act of 1973 (23 U.S.C. 402(b)(1)(F)).

(3) *Pedestrian over-passes, under-passes and ramps.* Pedestrian over-passes, under-passes and ramps, constructed with Federal financial assistance, shall be accessible to handicapped persons, including having gradients no steeper than 10 percent, unless:

(i) Alternate safe means are provided to enable mobility-limited persons to cross the roadway at that location; or

(ii) It would be infeasible for mobility-limited persons to reach the over-passes, under-passes or ramps because of unusual topographical or architectural obstacles unrelated to the federally assisted facility.

(b) Existing Facilities. *Rest area facilities.* Rest area facilities on Interstate highways shall be made accessible to handicapped persons, including wheelchair users, within a three-year period after the effective date of this part. Other rest area facilities shall be made accessible when Federal financial assistance is used to improve the rest area, or when the roadway adjacent to or in the near vicinity of the rest area is constructed, reconstructed or otherwise altered with Federal financial assistance.

§ 27.77 Urban Mass Transportation Administration—Mass Transit.

(a) *Certification.* (1) Recipients of funds under sections 3 and 5 of the Urban Mass Transportation Act shall certify that special efforts are being made in their service area to provide transportation that handicapped persons, including wheelchair users and semiambulatory persons, can use. These special efforts shall be consistent with the guidance in Appendix A to this subpart. Appendix B to this subpart provides advisory information on planning transportation that handicapped persons can use.

(2) Recipients of funds under section 18 of the Urban Mass Transportation Act shall certify that special efforts are being made in their service area to provide transportation that handicapped persons, including wheelchair users and semiambulatory persons, can use. This transportation shall be reasonable in comparison to the transportation provided to the general public and shall meet a significant fraction of the actual transportation needs of such persons within a reasonable time.

(3) The initial certification by each current recipient or grant applicant under this section shall be made within 60 days of the effective date of this section, and sent to the UMTA Regional Administrator, or, for section 18 applicants and recipients, to the FHWA Division Administrator through the designated section 18 state agency. Grant applications submitted after the effective date of this section shall include a certification or incorporate a prior certification by reference. Certifications may provide that the special efforts will be made

within six months of the effective date of this section.

(4) The UMTA or FHWA Administrator shall accept such certification, and compliance with such certification shall be deemed to constitute compliance with section 504 of the Rehabilitation Act of 1973, section 16(a) of the Urban Mass Transportation Act of 1964, as amended, and section 165(b) of the Federal-Aid Highway Act of 1973, insofar as these statutes relate to the provision of mass transportation service that handicapped persons can use.

(b) *Noncompliance.* A failure to certify as required by this section or a pattern of failure to carry out special efforts as required by this section constitutes noncompliance with this part. Following administrative enforcement procedures set forth in Subpart F of this part, recipients that have failed to certify as provided in subsection (a) of this section or that are found to have exhibited a pattern of failure to carry out such efforts are subject to having their certification revoked and to other administrative sanctions as provided in Subpart F.

(c) *Disparate Treatment.* Notwithstanding the recipient's certification under subsection (a) of this section, the recipient shall not on the ground of handicap deny transportation service on the recipient's system of mass transportation for the general public to any handicapped person capable of using such service, or otherwise discriminate against such person in connection with such service.

[46 FR 37492, July 20, 1981]

Appendix A—Advisory Information on Programming for Handicapped Persons

Pursuant to the planning requirements established for urbanized areas in title 23 and the Urban Mass Transportation Act of 1964, as amended, the Urban Mass Transportation Administration (UMTA) and the Federal Highway Administration (FHWA) have previously jointly issued regulations (23 CFR Part 450 and 49 CFR Part 613) that require the urban transportation planning process to include special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons. A supplementary statement which provides advisory information on the special efforts planning requirements is found in Appendix B to this part.

As a result of special efforts in planning, projects designed to benefit handicapped persons, including projects designed specifically to benefit wheelchair users and those with semiambulatory capabilities, should appear in the annual element of transportation improvement programs submitted to UMTA. (Whenever the term "handicapped persons" is used, elderly persons who are handicapped by reason of age are intended to be included.) The term "projects" is meant to include significant features of larger projects (e.g., level-change mechanisms on full-size buses), as well as specially designed services and improvements in the coordination of existing services and resources. "Projects" includes payment of current operating costs of previously purchased wheelchair-accessible equipment and includes payment of expenses associated with indirect methods of providing service, such as subsidies to reduce taxi fares for wheelchair users or trip coupons provided directly to wheelchair users.

Projects funded by UMTA under section 16(b)(2) of the Urban Mass Transportation Act of 1964, as amended (UMT Act) may be identified as deriving from local special efforts to meet the needs of wheelchair users and semiambulatory persons only to the extent that the following four conditions are met: (1) The service and vehicles serve wheelchair users and semiambulatory persons; (2) the service meets a priority need identified in this planning process; (3) the service is not restricted to a particularized organizational or institutional clientele; and (4) any fares charged are comparable to those which are charged on standard transit buses for trips of similar length.

The coordination of existing transportation available for wheelchair users and semiambulatory persons, and funds which support the provision or purchase of such transportation, provided by the transit operators, governmental health and welfare agencies, and private nonprofit organizations may be identified as a project deriving from local special efforts. If the service and resources thus coordinated meet the four conditions for eligible section 16(b)(2) services (see above) and appear in the transportation improvement program, then those services and resources themselves may be identified as deriving from local special efforts.

Transportation improvement programs submitted to UMTA should identify those projects that result from the wheelchair user aspect of the handicapped special efforts requirement. Compliance with the regulation of the General Services Administration (GSA) on Accommodations for the Physically Handicapped (41 CFR Subpart

101-19.6) should not be identified as deriving from local special efforts. On the other hand, efforts which go beyond what GSA's regulation requires (e.g., making an existing subway station wheelchair accessible when GSA's regulation does not so require) may be part of the local special effort.

UMTA will not specify a program design to meet the "special efforts" requirement. However, the following examples are illustrative of a level of effort that will be deemed to satisfy this requirement with respect to wheelchair users and semiambulatory persons:

1. A program for wheelchair users and semiambulatory handicapped persons that will involve the expenditure of an average annual dollar amount equivalent to a minimum of 3.5 percent of the financial assistance that the urbanized area receives under section 5 of the UMT Act. Recipients in nonurbanized areas that receive assistance under section 3 but not section 5 cannot, of course, use this first illustration. Although their certifications would be submitted to UMTA, such recipients should be guided by the requirements applicable specifically to section 18 recipients (see 49 CFR 27.77(a)(2) and 23 CFR Part 825, Appendix A, Para. 5(b)). These "3.5 percent funds" may be derived from sources other than section 5. The term "average" permits lower expenditure years to be balanced by higher expenditure years but does not permit an initial delay in implementing projects. Projects that qualify as local "special efforts" for wheelchair users and other semiambulatory persons under the initial paragraphs of this advisory information would be counted in computing the 3.5 percent.

For areas that choose to offer specialized service, there is, of course, no obligation to make that service available to persons who can use the regular transit system, although localities certainly may offer the service to such persons.

2. Purchase of only wheelchair-accessible new fixed route equipment until one-half of the fleet is accessible, or, in the alternative, provision of a substitute service that would provide comparable coverage and service levels.

3. A system, of any design, that would assure that every wheelchair user or semiambulatory person in the urbanized area would have public transportation available if requested for 10 round-trips per week at fares comparable to those which are charged on standard transit buses for trips of similar length, within the service area of the public transportation authority. The system could, for example, provide trip coupons to individuals who would then purchase the needed service.

These examples are illustrative of a level of effort that will satisfy the "special efforts" requirement. They are not regulatory standards or minimums, neither do they exhaust all valid approaches. They are meant to guide the development of local public transportation opportunities for wheelchair users and semiambulatory persons that in fact meet a significant fraction of the identified need within a reasonable time.

While the focus of the guidance in this appendix is on programming, reasonable progress in implementing programmed projects and in ensuring actual service is essential to meeting the "special efforts" requirement.

[46 FR 37492, July 20, 1981]

Appendix B—Advisory Information on Planning for Handicapped Persons Under UMTA and FHWA Joint Regulations, 23 CFR 450, Subparts A and C, and 49 CFR 613, Subparts A and B

1. *Background.* Section 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612), declares the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; directs that special efforts be made in the planning and design of mass transportation facilities and services so that the availability of mass transportation which elderly and handicapped persons can effectively utilize with be assured; and directs that all federal programs offering assistance in the field of mass transportation contain provisions implementing this policy. Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, contains a similar provision applicable to title 23 mass transportation assistance.

Pursuant to the planning requirements established for urbanized areas in title 23 and the Urban Mass Transportation Act of 1964, as amended, UMTA and FHWA have jointly issued regulations (23 CFR Part 450 and 49 CFR Part 613) that require the urban transportation planning process to include special efforts to plan public mass transportation facilities and services that can effectively be utilized by handicapped persons. (Whenever the term "handicapped persons" is used, elderly persons who are handicapped by reason of age are intended to be included.) The purpose of this supplementary statement is to provide additional guidance on the special efforts requirement.

2. *General.* Elderly persons and the ambulatory handicapped constitute a significant fraction of present transit ridership. General improvement to transit service can thus be expected to improve conditions for these groups.

The focus of this guidance is on service to persons who, because of age or disability, are unable to utilize present transit service and facilities effectively, particularly those who use wheelchairs or other mobility aids. In many communities, persons who use

wheelchairs or who otherwise have considerable difficulty negotiating steps find public transportation impossible to use for physical reasons, and private transportation-for-hire (e.g., special taxicab service, medicab, etc.) prohibitively expensive. Specific planning for this group is central to meeting the special efforts requirement.

3. *Consumer representation.* Section 450.120 of the joint planning regulations requires that the planning process include provisions to ensure involvement of the public. Handicapped persons, including wheelchair users and semiambulatory persons, are a part of the public and should be appropriately involved in the planning process to meet the special efforts requirement. It is presumed to be unlikely that effective project development to meet the needs of these users can occur without the assistance and cooperation of such persons, including wheelchair users and semiambulatory persons, and of public and private health and welfare agencies and handicapped consumer groups.

4. *Special efforts, urban transportation planning process.* The urban transportation planning process must include special efforts to plan public mass transportation facilities and service that can effectively be utilized by handicapped persons. As used in this guidance, the term "special efforts" refers both to service for handicapped persons in general and specifically to service for wheelchair users and semiambulatory persons. With regard to transportation for wheelchair users and others who cannot negotiate steps, "special efforts" in planning means genuine, good-faith progress in planning service for wheelchair users and semiambulatory handicapped persons that meets a significant fraction of the identified transportation needs of such persons within a reasonable time period. Particular attention should be given to those handicapped persons who are employed or for whom the lack of adequate transportation constitutes the major barrier to employment or job training.

In order to fulfill the special efforts requirement in planning, it will be necessary to identify the location and transportation needs of wheelchair users and semiambulatory handicapped persons within the urbanized area. To the extent possible this information should be derived from existing and secondary sources.

In carrying out planning for wheelchair users and semiambulatory persons, a range of alternative service improvements should be evaluated as to coverage, cost, and benefit. Maximum feasible opportunity should be given to private carriers, whether or not they are presently providing mass transportation services, to provide some or all of the services selected.

Considerable short-term benefit can be derived from the coordination and rationalization of existing resources and services to meet the needs of the elderly and handicapped, including wheelchair users and semiambulatory handicapped persons. Governmental health and welfare agencies and private nonprofit organizations spend substantial sums each year to provide or purchase transportation for their clients, and these resources as well as any reduced fare local taxi service should be considered for inclusion in a local coordinated plan.

[46 FR 37492, July 20, 1981]

§§ 27.78–27.79 [Reserved]

Subpart E—[Reserved]

Subpart F—Enforcement

§ 27.121 Compliance information.

(a) *Cooperation and assistance.* The responsible Departmental official, to the fullest extent practicable, seeks the cooperation of recipients in securing compliance with this part and provides assistance and guidance to recipients to help them comply with this part.

(b) *Compliance reports.* Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Departmental official or his/her designee during normal business hours to books, records, accounts, and other sources of information, and to facilities that are pertinent to compliance with this part. Where required information is in the exclusive possession of another agency or person who fails or refuses to furnish the information, the recipient

shall so certify in its report and describe the efforts made to obtain the information. Considerations of privacy or confidentiality do not bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement is not disclosed by the Department, except in formal enforcement proceedings, where necessary, or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its application to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Departmental official finds necessary to apprise them of the protections against discrimination provided by the Act and this part.

§ 27.123 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Departmental official or his/her designee, from time to time, reviews the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself/herself or any specific class of individuals to be harmed by failure to comply with this part may, personally or through a representative, file a written complaint with the responsible Departmental official. A Complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Departmental official or his/her designee.

(c) *Investigations.* The responsible Departmental official or his/her designee makes a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation includes, where appropriate, a review of the pertinent practices and policies of the recipient, and the circumstances under which the possible noncompliance with this part occurred.

(d) *Resolution of matters.* (1) If, after an investigation pursuant to paragraph (c) of this section, the responsible Departmental official finds reasonable cause to believe that there is a failure to comply with this part, the responsible Departmental official will inform the recipient. The matter is resolved by informal means whenever possible. If the responsible Departmental official determines that the matter cannot be resolved by informal means, action is taken as provided in § 27.125.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Departmental official or his/her designee so informs the recipient and the complainant, if any, in writing.

(e) *Intimidating and retaliatory acts prohibited.* No employee or contractor of a recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 504 of the Act or this part, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, hearing, or proceeding, under this part. The identity of complainants is kept confidential at their election during the conduct of any investigation, hearing or proceeding under this part. However, when such confidentiality is likely to hinder the investigation, the complainant will be advised for the purpose of waiving the privilege.

§ 27.125 Compliance procedure.

(a) *General.* If there is reasonable cause for the responsible Departmental official to believe that there is a failure to comply with any provision of this part that cannot be corrected by informal means, the responsible Departmental official may recommend suspension or termination of, or refusal to grant or to continue Federal financial assistance, or take any other steps authorized by law. Such other steps may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractural undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Refusal of Federal financial assistance.* (1) No order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective until:

(i) The responsible Departmental official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means; and

(ii) There has been an express finding by the Secretary on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part.

(2) Any action to suspend, terminate, or refuse to grant or to continue Federal financial assistance is limited to the particular recipient who has failed to comply, and is limited in its effect to the particular program, or part thereof, in which noncompliance has been found.

(c) *Other means authorized by law.* No other action is taken until:

(1) The responsible Departmental official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified by the responsible Departmental official of its failure to comply and of the proposed action;

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period, additional efforts are made to persuade the recipient or other person to comply with the regulations and to take such corrective action as may be appropriate.

§ 27.127 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 27.125(b), reasonable notice is given by the responsible Departmental official by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice advises the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fixes a date not less than 20 days after the date of such notice within which the applicant or recipient may request a hearing; or

(2) Advises the applicant or recipient that the matter in question has been set for hearing at a stated place and time.

The time and place shall be reasonable and subject to change for cause. The complainant, if any, also is advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing constitutes a waiver of the right to a hearing under section 504 of the Act and § 27.125(b), and consent to the making of a decision on the basis of such information as may be part of the record.

(b) If the applicant or recipient waives its opportunity for a hearing, the responsible Departmental official shall notify the applicant or recipient that it has the opportunity to submit written information and argument for the record. The responsible Departmental official may also place written information and argument into the record.

(c) *Time and place of hearing.* Hearings are held at the office of the Department in Washington, D.C., at a time fixed by the responsible Departmental official unless he/she determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings are held before an Administrative Law Judge designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(d) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the responsible De-

partmental official have the right to be represented by counsel.

(e) *Procedures, evidence and record.* (1) The hearing, decision, and any administrative review thereof are conducted in conformity with sections 554 through 557 of Title 5 of the United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving notice subsequent to those provided for in paragraph (a) of this section, taking testimony, exhibits, arguments and briefs, requests for findings, and other related matters. The responsible Departmental official and the applicant or recipient are entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing. Any person (other than a government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the government's behalf, attends at a time and place scheduled for a hearing provided for by this part may be reimbursed for his/her travel and actual expenses in an amount not to exceed the amount payable under the standardized travel regulations applicable to a government employee traveling on official business.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross examination are applied where reasonably necessary by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record are open to examination by the parties and opportunity is given to refute facts and arguments advanced by either side. A transcript is made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions are based on the hearing record and written findings shall be made.

(f) *Consolidation or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under section 504 of the Act, the responsible Departmental official may, in agreement with such other departments or agencies, where applicable, provide for consolidated or joint hearings. Final decisions in such cases, insofar as this regulation is concerned, are made in accordance with § 27.129.

§ 27.129 Decisions and notices.

(a) *Decisions by Administrative Law Judge.* After the hearing, the Administrative Law Judge certifies the entire record including his recommended findings and proposed decision to the Secretary for a final decision. A copy of the certification is mailed to the applicant or recipient and to the complainant, if any. The responsible Departmental official and the applicant or recipient may submit written arguments to the Secretary concerning the Administrative Law Judge's recommended findings and proposed decision.

(b) *Final decision by the Secretary.* When the record is certified to the Secretary by the Administrative Law Judge, the Secretary reviews the record and accepts, rejects, or modifies the Administrative Law Judge's recommended findings and proposed decision, stating the reasons therefor.

(c) *Decisions if hearing is waived.* Whenever a hearing pursuant to § 27.125(b) is waived, the Secretary makes his/her final decision on the record, stating the reasons therefor.

(d) *Rulings required.* Each decision of the Administrative Law Judge or the Secretary contains a ruling on each finding or conclusion presented and specifies any failures to comply with this part.

(e) *Content of orders.* The final decision may provide for suspension or termination, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved. The decision may contain such terms, conditions, and other pro-

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visions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended unless and until the recipient corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(f) *Subsequent proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section is restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may, at any time, request the responsible Departmental official to restore its eligibility, to receive Federal financial assistance. Any request must be supported by information showing that the applicant or recipient has met the requirements of paragraph (f)(1) of this section. If the responsible Departmental official determines that those requirements have been satisfied, he/she may restore such eligibility, subject to the approval of the Secretary.

(3) If the responsible Departmental official denies any such request, the applicant or recipient may submit a request, in writing, for a hearing specifying why it believes the responsible Departmental official should restore it to full eligibility. It is thereupon given a prompt hearing, with a decision on the record. The applicant or recipient is restored to eligibility if it demonstrates to the satisfaction of the Secretary at the hearing that it satisfied the requirements of paragraph (f)(1) of this section.

(4) The hearing procedures of § 27.127(b)-(c) and paragraphs (a)-(d) of this section apply to hearings held under paragraph (f)(3) of this section.

(5) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

PART 71—STANDARD TIME ZONE BOUNDARIES

Sec.

71.1 Limits defined; exceptions authorized for certain rail operating purposes only.
71.2 Annual advancement of standard time.
71.3 Atlantic zone.
71.4 Eastern zone.
71.5 Boundary line between eastern and central zones.
71.6 Central zone.
71.7 Boundary line between central and mountain zones.
71.8 Mountain zone.
71.9 Boundary line between mountain and Pacific zones.
71.10 Pacific zone.
71.11 Yukon zones.
71.12 Alaska-Hawaii zone.
71.13 Bering zone.

AUTHORITY: Secs. 1-4, 40 Stat. 450, as amended, sec. 1, 41 Stat. 1446, as amended, secs. 2-7, 80 Stat. 107-109, sec. 6(e)(5), 80 Stat. 937, sec. 1, 84 Stat. 119; 15 U.S.C. 260-267, 49 U.S.C. 1655(e)(5), unless otherwise noted.

SOURCE: Amdt. 71-11, 35 FR 12318, Aug. 1, 1970, unless otherwise noted.

§ 71.1 Limits defined; exceptions authorized for certain rail operating purposes only.

(a) This part prescribes the geographic limits of each of the eight standard time zones established by section 1 of the Standard Time Act, as amended by section 4 of the Uniform Time Act of 1966 (15 U.S.C. 261). It also contains lists of operating exceptions granted for specified rail carriers, whose operations cross the time zone boundaries prescribed by this part, authorizing them to carry the standard of time on which the major portion of a particular operation is conducted into an adjoining time zone.

(b) Any rail carrier whose operations cross a time zone boundary prescribed by this part may apply for an operating exception to the General Counsel, Department of Transportation, Washington, D.C. 20590. However, each rail carrier for which an operating exception is granted shall, in its advertisements, time cards, station bulletin boards, and other publications, show arrival and departure times in terms of

the standard time for the place concerned.

(c) The time zones established by the Standard Time Act, as amended by the Uniform Time Act of 1966, are Atlantic, eastern, central, mountain, Pacific, Yukon, Alaska-Hawaii, and Bering.

§ 71.2 Annual advancement of standard time.

(a) Section 3(a) of the Uniform Time Act of 1966 (15 U.S.C. 260a(a)) requires that "the standard time of each zone * * * shall be advanced 1 hour [during the period beginning at 2:00 a.m. on the last Sunday in April of each year and ending at 2:00 a.m. on the last Sunday in October] * * * and such time as so advanced shall be the standard time of such zone during such period." The section further authorizes any State to exempt itself from this requirement. For these reasons, all times (including the period of advanced time) in the United States, whether in an exempted State or not, shall be cited as "standard time" during the entire year.

(b) Section 3(b) of the Uniform Time Act of 1966 (15 U.S.C. 260a(b)) provides that "it is the express intent of Congress * * * to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for advances in time or changeover dates different from those specified in [section 3(a) of that Act]", which are those specified in paragraph (a) of this section.

§ 71.3 Atlantic zone.

The first zone, the Atlantic standard time zone, includes that part of the United States that is between 52°30′ W. longitude and 67°30′ W. longitude and that part of the Commonwealth of Puerto Rico that is west of 67°30′ W. longitude, but does not include any part of the State of Maine.

§ 71.4 Eastern zone.

The second zone, the eastern standard time zone, includes that part of the United States that is west of 67°30′ W. longitude and east of the boundary line described in § 71.5, and includes all of the State of Maine, but does not include any part of the Commonwealth of Puerto Rico.

§ 71.5 Boundary line between eastern and central zones.

(a) *Minnesota-Michigan-Wisconsin.* From the junction of the western boundary of the State of Michigan with the boundary between the United States and Canada northerly and easterly along the west line of Gogebic County to the west line of Ontonagon County; thence south along the west line of Ontonagon County to the north line of Gogebic County; thence southerly and easterly along the north line of Gogebic County to the west line of Iron County; thence north along the west line of Iron County to the north line of Iron County; thence east along the north line of Iron County to the east line of Iron County; thence south along the east line of Iron County to the north line of Dickinson County; thence east along the north line of Dickinson County to the east line of Dickinson County; thence south along the east line of Dickinson County to the north line of Menominee County; thence east along the north line of Menominee County to the east line of Menominee County; thence southerly and easterly along the east line of Menominee County to Lake Michigan; thence east to the western boundary of the State of Michigan; thence southerly and easterly along the western boundary of the State of Michigan to a point in the middle of Lake Michigan opposite the main channel of Green Bay; thence southerly along the western boundary of the State of Michigan to its junction with the southern boundary thereof and the northern boundary of the State of Indiana.

(b) *Indiana-Illinois.* From the junction of the western boundary of the State of Michigan with the northern boundary of the State of Indiana easterly along the northern boundary of the State of Indiana to the east line of LaPorte County; thence southerly along the east line of La Porte County to the north line of Starke County; thence east along the north line of Starke County to the east line of

Starke County; thence south along the east line of Starke County to the south line of Starke County; thence west along the south line of Starke County to the east line of Jasper County; thence south along the east line of Jasper County to the south line of Jasper County; thence west along the south lines of Jasper and Newton Counties to the western boundary of the State of Indiana; thence south along the western boundary of the State of Indiana to the north line of Gibson County; thence easterly and southerly along the north line of Gibson County to the east line of Gibson County; thence south along the east line of Gibson County to the north line of Warrick County; thence easterly and southerly along the north lines of Warrick and Spencer Counties to the east line of Spencer County; thence southerly along the east line of Spencer County to the Indiana-Kentucky boundary.

(c) *Kentucky.* From the junction of the east line of Spencer County, Ind., with the Indiana-Kentucky boundary easterly along that boundary to the west line of Meade County, Ky.; thence southeasterly and southwesterly along the west lines of Meade and Hardin Counties to the southwest corner of Hardin County; thence along the south lines of Hardin and Larue Counties to the northwest corner of Taylor County; thence southeasterly along the west (southwest) line of Taylor County and northeasterly along the east (southeast) line of Taylor County to the west line of Casey County; and thence southerly along the west and south lines of Casey, Pulaski, and McCreary Counties to the Kentucky-Tennessee boundary.

(d) *Tennessee.* From the junction of the west line of McCreary County, Ky., with the Kentucky-Tennessee boundary westerly along that boundary to the west line of Scott County, Tenn.; thence southerly along the west line of Scott County, the north and west lines of Morgan County, and the north line of Roane County to the north line of Rhea County; thence northwesterly along the north line of Rhea County; and thence southwesterly along the west lines of Rhea and Hamilton Counties to the Tennessee-Georgia boundary.

(e) *Georgia-Alabama.* From the junction of the west line of Hamilton County, Tenn., with the Tennessee-Georgia boundary westerly along that boundary to its junction with the Alabama-Georgia boundary; thence southerly along that boundary and the Florida-Georgia boundary to the southwest corner of the State of Georgia.

(f) *Florida.* From the southwest corner of the State of Georgia to the midpoint of the Apalachicola River on the downstream side of Jim Woodruff Dam; thence southerly along the middle of the main channel of the Apalachicola River to its intersection with the Jackson River; thence westerly along the center of the Jackson River to its intersection with the Intracoastal Waterway; thence westerly along the center of the Intracoastal Waterway to the west line of Gulf County; thence southerly along the west line of Gulf County to the Gulf of Mexico.

(g) [Reserved]

(h) *Municipalities on boundary line.* All municipalities located upon the zone boundary line described in this section are in the central standard time zone.

[Amdt. 71-11, 35 FR 12318, Aug. 1, 1970, as amended by Amdt. 71-12, 37 FR 11972, June 16, 1972; Amdt. 71-13, 38 FR 9229, Apr. 12, 1973; Amdt. 71-14, 38 FR 13725, May 25, 1973; Amdt. 77-13, 42 FR 56610, Oct. 27, 1977]

§ 71.6 Central zone.

The third zone, the central standard time zone, includes that part of the United States that is west of the boundary line between the eastern and central standard time zones described in § 71.5 and east of the boundary line between the central and mountain standard time zones described in § 71.7.

§ 71.7 Boundary line between central and mountain zones.

(a) *Montana-North Dakota.* Beginning at the junction of the Montana-North Dakota boundary with the boundary of the United States and

Canada southerly along the Montana-North Dakota boundary to the Missouri River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Missouri and Yellowstone Rivers; thence southerly and easterly along the middle of the Yellowstone River to the north boundary of T. 150 N., R. 104 W.; thence east to the northwest corner of T. 150 N., R. 102 W.; thence south to the southwest corner of T. 149 N., R. 102 W.; thence east to the northwest corner of T. 148 N., R. 102 W.; thence south to the northwest corner of T. 147 N., R. 102 W.; thence east to the southwest corner of T. 148 N., R. 101 W.; thence south to the middle of the Little Missouri; thence easterly and northerly along the middle of that river to the midpoint of its confluence with the Missouri River; thence southerly and easterly along the middle of the Missouri River to the north line of Morton County; thence west along the north line of Morton County to the northwest corner of T. 140 N., R. 83 W.; thence south to the southwest corner of T. 140 N., R. 83 W.; thence east to the southeast corner of T. 140 N., R. 83 W.; thence south to the middle of the Heart River; thence easterly and northerly along the middle of that river to the southern boundary of T. 139 N., R. 82 W.; thence east to the middle of the Heart River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Heart and Missouri Rivers; thence southerly and easterly along the middle of the Missouri River to the northern boundary of T. 130 N., R. 80 W.; thence west to the northwest corner of T. 130 N., R. 80 W.; thence south to the North Dakota-South Dakota boundary; thence easterly along that boundary to the middle of the Missouri River.

(b) *South Dakota.* From the junction of the North Dakota-South Dakota boundary with the Missouri River southerly along the main channel of that river to the crossing of the Chicago & North Western Railway near Pierre; thence southwesterly to the northeast corner of T. 1 S., R. 28 E. in Jones County; thence south along the range line between Rs. 28 and 29 E. to the north line of Mellette County; thence east along the north line of Mellette County to the west line of Tripp County; thence south along the west line of Tripp County to the South Dakota-Nebraska boundary.

(c) *Nebraska.* From the junction of the west line of Tripp County, South Dakota with the South Dakota-Nebraska boundary west along that boundary to the west line of R. 30 W.; thence south along the range line between Rs. 30 and 31 W. to the southwest corner of sec. 19, T. 33 N., R. 30 W.; thence easterly along section lines to the northeast corner of sec. 29, T. 33 N., R. 30 W.; thence southerly along section lines with their offsets to the northeast corner of sec. 17, T. 32 N., R. 30 W.; thence westerly along section lines to the northwest corner of sec. 18, T. 32 N., R. 30 W.; thence southerly along the range line to the southwest corner of T. 31 N., R. 30 W.; thence easterly along the township line to the northeast corner of T. 30 N., R. 30 W.; thence southerly along the range line to the southwest corner of T. 29 N., R. 29 W.; thence westerly along the township line to the northwest corner of sec. 4, T. 28 N., R. 30 W.; thence southerly along section lines to the southwest corner of sec. 33, T. 28 N., R. 30 W.; thence easterly along the township line to the northeast corner of sec. 4, T. 27 N., R. 30 W.; thence southerly along section lines to the southwest corner of sec. 22, T. 26 N., R. 30 W.; thence easterly along section lines to the southeast corner of sec. 24, T. 26 N., R. 30 W.; thence southerly along the range line to the north line of Thomas County; thence westerly along the north line of Thomas County to the west line of Thomas County; thence south along the west line of Thomas County to the north line of McPherson County; thence west along the north line of McPherson County to the west line of McPherson County; thence south along the west line of McPherson County to the north line of Keith County; thence east along the north line of Keith County to the west line of Lincoln County; thence south along the west line of Lincoln County to the north line of Hayes County; thence west along the north lines of Hayes

County to the west line of Hayes County; thence south along the west line of Hayes and Hitchcock Counties to the Nebraska-Kansas boundary.

(d) *Kansas-Colorado.* From the junction of the west line of Hitchcock County, Nebr., with the Nebraska-Kansas boundary westerly along that boundary to the northwest corner of the State of Kansas; thence southerly along the Kansas-Colorado boundary to the north line of Sherman County, Kans.; thence easterly along the north line of Sherman County to the east line of Sherman County; thence southerly along the east line of Sherman County to the north line of Logan County; thence westerly along the north line of Logan County to the east line of Wallace County; thence southerly along the east line of Wallace County to the north line of Wichita County; thence westerly along the north line of Wichita County to the east line of Greeley County; thence southerly along the east line of Greeley County to the north line of Hamilton County; thence easterly along the north line of Hamilton and Kearny Counties to the junction of the east line of R. 36 W.; thence southerly along the range line between Rs. 35 and 36 W. with its offset to the south line of Kearny County; thence westerly along the south line of Kearny and Hamilton Counties to the Kansas-Colorado boundary; thence southerly along the Kansas-Colorado boundary to the junction of that boundary with the north boundary of the State of Oklahoma.

(e) *Oklahoma-Texas-New Mexico.* From the junction of the Kansas-Colorado boundary with the northern boundary of the State of Oklahoma westerly along the Colorado-Oklahoma boundary to the northwest corner of the State of Oklahoma; thence southerly along the west boundary of the State of Oklahoma and the west boundary of the State of Texas to the southeast corner of the State of New Mexico; thence westerly along the Texas-New Mexico boundary to the east line of Hudspeth County, Tex.; thence southerly along the east line of Hudspeth County, Tex., to the boundary between the United States and Mexico.

(f) [Reserved]

(g) *Points on boundary line.* All municipalities located upon the zone boundary line described in this section are in the mountain standard time zone, except Murdo, S. Dak., which is in the central standard time zone.

[Amdt. 71-11, 35 FR 12318, Aug. 1, 1970 as amended by Amdt. 71-14, 38 FR 13725, May 25, 1973; Amdt. 71-16, 43 FR 42763, Sept. 21, 1978]

§ 71.8 Mountain zone.

The fourth zone, the mountain standard time zone, includes that part of the United States that is west of the boundary line between the central and mountain standard time zones described in § 71.7 and east of the boundary line between the mountain and Pacific standard time zones described in § 71.9.

§ 71.9 Boundary line between mountain and Pacific zones.

(a) *Montana-Idaho-Oregon.* From the junction of the Idaho-Montana boundary with the boundary between the United States and Canada southerly along the Idaho-Montana boundary to the boundary line between Idaho County, Idaho, and Lemhi County, Idaho; thence southwesterly along the boundary line between those two counties to the main channel of the Salmon River; thence westerly along the main channel of the Salmon River to the Idaho-Oregon boundary; thence southerly along that boundary to the boundary line between Baker County, Oreg., and Malheur County, Oreg.; thence westerly along the north line of Malheur County to the northwest corner of Malheur County; thence southerly along the west line of Malheur County to the southwest corner of T. 35 S., R. 37 E.; thence east to the Idaho-Oregon boundary; thence south along that boundary to the southwest corner of the State of Idaho; thence easterly along the Idaho-Nevada boundary to the northeast corner of the State of Nevada.

(b) *Utah-Nevada-Arizona-California.* From the northeast corner of the State of Nevada southerly along the Utah-Nevada boundary, the Nevada-Arizona boundary, and the Arizona-

California boundary to the boundary between the United States and Mexico.

(c) [Reserved]

(d) *Points on boundary line.* All municipalities located upon the zone boundary line described in this section are in the mountain standard time zone.

[Amdt. 71-11, 35 FR 12318, Aug. 1, 1970, as amended by Amdt. 71-14, 38 FR 13725, May 25, 1973]

§ 71.10 Pacific Zone.

The fifth zone, Pacific standard time zone, includes the part of the United States that is west of the boundary line between the mountain and Pacific standard time zones described in § 71.9 and east of 137 degrees W. longitude.

[45 FR 63494, Sept. 25, 1980]

§ 71.11 Yukon Zones.

The sixth zone, the Yukon Standard Time Zone, includes the part of the United States that is between 137 degrees W. longitude and 141 degrees W. longitude.

[45 FR 63494, Sept. 25, 1980]

§ 71.12 Alaska-Hawaii zone.

The seventh zone, the Alaska-Hawaii standard time zone, includes that part of the United States that is between 141° W. longitude and 162° W. longitude and including all of the State of Hawaii.

§ 71.13 Bering zone.

The eighth zone, the Bering standard time zone, includes that part of the United States that is between 162° W. longitude and 172°30′ W. longitude and that part of the Aleutian Islands that is west of 172°30′ W. longitude, but does not include any part of the State of Hawaii.

PART 79—MEDALS OF HONOR

Sec.

79.1 Applications and affidavits.
79.2 Character of evidence.
79.3 Investigation by Department.
79.4 Review of evidence; recommendations.
79.5 Award of Medals.
79.6 Adoption and revision of designs.
79.7 Time limits for filing.

AUTHORITY: Secs. 1, 2, 33 Stat. 743, as amended; 49 U.S.C. 1201 et seq., unless otherwise noted.

SOURCE: 33 FR 19605, Dec. 25, 1968, unless otherwise noted.

§ 79.1 Applications and affidavits.

Applications for medals under the Medals of Honor Act, 33 Stat. 743, as amended by the act of June 13, 1957, 71 Stat. 69 (49 U.S.C. 1201 et seq.), shall be prepared in accordance with, and contain the information called for in, the form of application prescribed by the Department of Transportation consistent with these regulations, or any instructions which may be issued by the Department with respect to the filing of an application. Applications should be addressed to and filed with the Department of Transportation, Washington, D.C. The acts relied upon in the application must be of such a nature that the applicant would not be expected or required to perform such acts in performing the duties of his regular work or vocation. Satisfactory evidence of the facts upon which the application is based must be filed in each case. Such evidence should be in the form of affidavits made by witnesses of good repute and standing, testifying of their own knowledge. The affidavits should be made before an officer duly authorized to administer oaths, and should be accompanied by the certificate of a United States official of the district in which the affiants reside, such as a judge or clerk of a United States court, a district attorney, or a postmaster, to the effect that the affiants are reputable and credible persons. If the affidavits are taken before an officer without an official seal, his official character must be certified by the proper officer of a court of record under the seal thereof.

§ 79.2 Character of evidence.

The expression by a witness, or witnesses, of the opinion that the person for whom an award is sought acted with extreme daring and endangered his life is not sufficient basis for an award, but the affidavits or testimony should set forth the pertinent facts in detail, and show clearly in what manner and to what extent the life of

the applicant was endangered and extreme daring manifested by him. The affidavits or testimony should also state the name of the city, town, or village in or near which the incident occurred, the railroad, public highway, road, or street, and the place thereon where the incident occurred, the date, time of day, and condition of the weather, the names and addresses of: (a) The carrier or carriers, or person or persons, involved, (b) the police, fire, or other public officials who investigated the incident, and (c) all persons present, when practicable, and any other pertinent circumstances. These regulations shall not be construed as applicable to any motor-vehicle incident with respect to which no part of the directly related events takes place on a public highway, road, or street.

§ 79.3 Investigation by Department.

In addition to considering applications filed with it, the Department of Transportation may, upon its own motion, initiate proceedings for award of medals under the Medals of Honor Act and cause investigations to be made. Sworn testimony of witnesses taken before an officer or employee of the Department designated by the Department for the purpose of taking such testimony shall become a part of the record in the case.

§ 79.4 Review of evidence; recommendations.

Applications for medals, together with all affidavits, testimony, and other evidence received in connection therewith, and the records developed in connection with investigations initiated by the Department of Transportation, shall be referred to a committee of three Department officials designated by the Secretary of Transportation. One of such officials shall be directly concerned with railroad safety, and another with motor-carrier safety. The committee shall carefully consider each application or record, and after thoroughly weighing the evidence shall prepare an abstract or brief covering the case and forward it, together with the committee's recommendation, to the Secretary of Transportation for his consideration.

§ 79.5 Award of Medals.

Upon approval by the Secretary of Transportation of the committee's recommendation in any case, the Secretary shall make the award of the medal in the name and on behalf of the President.

§ 79.6 Adoption and revision of designs.

The Secretary of Transportation is authorized to adopt and revise the existing designs for the medal, rosette, and ribbon provided for by the Act.

§ 79.7 Time limits for filing.

No application for a medal shall be considered unless it is filed within two years from the date of the occurrence of the incident upon which it is based.

PART 81—RECOMMENDATIONS TO THE PRESIDENT UNDER SECTION 801 OF THE FEDERAL AVIATION ACT OF 1958

Sec.

81.1 Purpose.
81.3 Applicability.
81.5 Submission of comments.
81.7 Docket.

AUTHORITY: Sec. 9, 80 Stat. 944, 49 U.S.C. 1657; EO 11920 (June 10, 1976, 41 FR 23665).

SOURCE: 41 FR 32594, Aug. 4, 1976, unless otherwise noted.

§ 81.1 Purpose.

The purpose of this part is to set forth procedures for the receipt by the Department of Transportation of comments from persons not employed by the Federal government on possible recommendations by the Department to the President on decisions of the Civil Aeronautics Board submitted for the President's approval under section 801 of the Federal Aviation Act of 1958, which relates to overseas and international air transportation.

§ 81.3 Applicability.

(a) This part applies to all communications between persons not employed by the Federal government and officials or employees of the Department of Transportation on matters set forth in § 81.1 of this part.

(b) This part applies, with respect to any particular proceeding before the Civil Aeronautics Board, from the time that the Board's decision has been submitted to the President for consideration until the President has issued a final decision with respect to that proceeding.

§ 81.5 Submission of comments.

(a) All communications with Departmental officials or employees concerning a Presidential decision under section 801 of the Federal Aviation Act shall, whenever possible, be made in writing. Any such communication which is not made in writing shall be summarized by the official or employee of the Department who receives the communication.

(b) All such summaries and written communications except those relating to matters that are specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy are placed in a public docket and available for public inspection and copying, and responsive comment.

§ 81.7 Docket.

(a) All comments submitted under this part shall reference OST Docket No. 45 and, as a subdocket number, the number of the Civil Aeronautics Board docket relating to the proceeding which is the subject of the comment.

(b) The original and four copies of such comments may be mailed to the Docket Clerk, Office of The General Counsel, TGC, Department of Transportation, Washington, D.C. 20590, or delivered to the Docket Clerk in the Office of the Assistant General Counsel for Operations and Legal Counsel, room 10100 Nassif building, 400 Seventh Street SW., Washington, D.C., 9 am to 5:30 pm local time, Monday through Friday except Federal holidays. Written comments submitted to Department officials other than the Docket Clerk and summaries of oral communications prepared in accordance with § 81.5(a) of this part shall be placed in the appropriate subdocket of OST Docket No. 45.

(c) All comments submitted under this part are available for public inspection and copying, and responsive comment, at the address and times specified in paragraph (b) of this section.

PART 89—IMPLEMENTATION OF FEDERAL CLAIMS COLLECTION ACT OF 1966

Sec.

89.1 Delegations of authority.
89.3 Exceptions to delegated authority.
89.5 Redelegation.
89.7 Standards for exercise of delegated authority.
89.9 Documentary evidence of compromise.
89.11 Regulations, reports and supporting documentation.

AUTHORITY: Secs. 2-3, 80 Stat. 308-309; 31 U.S.C. 951-953, unless otherwise noted.

SOURCE: 33 FR 5583, Apr. 10, 1968, unless otherwise noted.

§ 89.1 Delegations of authority.

The functions, powers, and duties of the Secretary of Transportation to attempt collection of claims, to compromise claims of the United States not exceeding $20,000, and to suspend and terminate action to collect such claims are delegated to—

(a) The Assistant Secretary for Administration with respect to claims arising out of the activities of, or referred to, the Office of the Secretary; and

(b) The head of each operating administration and the Chairman of the National Transportation Safety Board, each with respect to claims arising out of the activities of, or referred to, his organization.

[33 FR 5583, Apr. 10, 1968, as amended by Amdt. 89-1, 37 FR 16876, Aug. 22, 1972]

§ 89.3 Exceptions to delegated authority.

The authority delegated under § 89.1 does not apply to any claim—

(a) As to which there is an indication of (1) fraud; (2) the presentation of a false claim; or (3) misrepresentation on the part of the debtor or any other party having an interest in the claim;

(b) Based in whole or in part on conduct in violation of the antitrust laws;

(c) Based on tax statutes; or

(d) Arising from an exception made by the General Accounting Office in the account of an accountable officer.

[33 FR 5583, Apr. 10, 1968, as amended by Amdt. 89-1, 37 FR 16876, Aug. 22, 1972]

§ 89.5 Redelegation.

Each officer to whom authority is delegated under § 89.1 may redelegate and authorize successive redelegations of that authority within the organization under his jurisdiction.

§ 89.7 Standards for exercise of delegated authority.

The authority delegated under § 89.1 shall be exercised in accordance with the standards for the collection and compromise of claims and for the suspension and termination of action to collect claims promulgated by the United States General Accounting Office and the United States Department of Justice, and published at 4 CFR Chapter II, as those standards may be amended.

§ 89.9 Documentary evidence of compromise.

A compromise of any claim is not final or binding on the United States unless it is in writing, signed by an officer or employee authorized to compromise that claim.

§ 89.11 Regulations, reports, and supporting documentation.

(a) Pending amendment of this part to further provide for the exercise of the authority delegated herein, each officer to whom authority is delegated under § 89.1 may promulgate regulations for the exercise of that authority within his organization. These regulations shall be revised, as necessary, to conform to any amendments to this part.

(b) Each officer to whom authority is delegated under § 89.1 shall furnish the following information to the Assistant Secretary for Administration:

(1) A copy of each redelegation of that authority.

(2) A semiannual report listing those claims compromised or with respect to which collection action has been suspended or terminated, specifying the name of the debtors, the amount of the claim, the nature of the claim, the type of action taken, and the general basis for the action taken.

(3) A copy of any implementing regulations governing the exercise of the authority delegated herein, and any amendments thereto.

(c) Each officer or employee to whom the Secretary's authority has been delegated or redelegated, before exercising such authority, shall acquire sufficient documentation to demonstrate that the action taken is in the best interests of the United States. This documentation will be retained.

(d) The failure of any officer or employee to comply with this section does not limit or impair his exercise of authority.

[33 FR 5583, Apr. 10, 1968, as amended by Amdt. 89-1, 37 FR 16876, Aug. 22, 1972]

PART 91—INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES

Sec.

91.1 Purpose.
91.3 Investigations
91.5 Findings and recommendations.
91.7 Determination of compensatory charges.
91.9 Distribution of compensatory funds.
91.11 Standards.
91.13 Refunds.

AUTHORITY: Secs. 2-3, 88 Stat. 2103, 49 U.S.C. 1159a and 1159b, Pub. L. 93-623.

SOURCE: 41 FR 54770, Dec. 15, 1976, unless otherwise noted.

§ 91.1 Purpose.

The purpose of this part is to prescribe the Secretary's role in executing his responsibilities under sections 2 and 3 of the International Air Transportation Fair Competitive Practices Act of 1974 to the end that United States flag air carriers operating in foreign air transportation are protected from all forms of discrimination or unfair competitive practices and are compensated for excessive or otherwise discriminatory charges levied by foreign governments or other foreign entities for the use of airport or airway property.

§ 91.3 Investigations.

The Assistant Secretary for Policy, Plans and International Affairs (Assistant Secretary), in coordination with the General Counsel and the Federal Aviation Administrator (Administrator), on complaint of any United States flag air carrier or on their own initiative, shall investigate (a) Instances of alleged excessive or otherwise discriminatory user charges or (b) discriminatory or unfair competitive practices to which United States flag air carriers are subjected by a foreign government or other foreign entity. Excessive or otherwise discriminatory charges include, but are not limited to, unreasonable landing fees, unreasonable monopoly ground handling fees and unreasonable air navigation charges. Discriminatory or unfair competitive practices include, but are not limited to, unreasonably differentiated fuel allocations, cargo, charter or currency restrictions and inferior monopoly ground handling services.

§ 91.5 Findings and recommendations.

(a) Upon finding that a foreign government or entity imposes excessive or otherwise discriminatory charges against United States flag air carriers or causes such carriers to be subjected to discriminatory or unfair competitive practices, the Assistant Secretary, in coordination with the General Counsel and the Administrator, shall determine the extent of the discrimination or unfair competitive practices.

(b) Where the matter involves excessive or otherwise discriminatory charges, the Assistant Secretary shall prepare a report and recommend that the Secretary promptly submit a report of the case to the Secretary of State and the Civil Aeronautics Board in accordance with Section 11 of the International Aviation Facilities Act, 49 U.S.C. 1159a.

(c) Where the matter involves discrimination or unfair competitive practices other than user charges, the Assistant Secretary shall prepare a report and recommend that the Secretary take such other action within the jurisdiction of the Department as is appropriate under the circumstances in accordance with 49 U.S.C. 1159b.

(d) If the Secretary determines, after review of the report and recommendations made under paragraph (b) of this section, that unreasonably excessive or otherwise discriminatory charges exist, the Secretary will submit a report on the matter to the Secretary of State and the Chairman of the Civil Aeronautics Board in accordance with 49 U.S.C. 1159a.

(e) If the Secretary determines, after review of the report and recommendations made under paragraph (c) of this section, that discriminatory or unfair competitive practices exist, the Secretary will commence all appropriate action within his jurisdiction in accordance with 49 U.S.C. 1159b.

§ 91.7 Determination of compensatory charges.

(a) Upon indication by the Secretary of State that the excessive or otherwise discriminatory user charges have not been reduced or eliminated, the Secretary will direct the Assistant Secretary to compute the appropriate amount of compensatory charges.

(b) Upon approving the amount of compensatory charges computed under paragraph (a) of this section, the Secretary will notify the Secretary of State and the Secretary of the Treasury of his determination.

§ 91.9 Distribution of compensatory funds.

(a) On or after January 1 and July 1 of each year, each United States flag air carrier which has been subjected to excessive or otherwise discriminatory charges for which compensatory charges have been collected shall, upon compliance with paragraph (c) of this section, be entitled to pro rata reimbursement for excessive or otherwise discriminatory charges incurred to date, not to exceed the amount of such charges actually paid by that carrier.

(b) The Secretary will publish in the FEDERAL REGISTER, at least 30 days before a United States flag air carrier becomes entitled to reimbursement, a notice setting forth the procedures to be followed in making claims for reimbursement. This notice will specify the form in which application shall be

made and the specific items of proof, if any, to be submitted.

(c) On or after January 1 and July 1 of each year, each United States flag carrier claiming a right to reimbursement shall apply for such reimbursement in accordance with the FEDERAL REGISTER notice referred to in paragraph (b) of this section.

(d) The Assistant Secretary shall, on the basis of the application and such other data as may be available, compute the amount to which such carrier is entitled.

(e) Subject to the provisions of § 91.13(b), upon approving the computation made by the Assistant Secretary, the Secretary shall issue such certificate as will entitle each such carrier to payment from the account maintained by the Secretary of the Treasury for this purpose.

§ 91.11 Standards.

(a) To minimize the burden of implementing this part on the United States, on United States flag air carriers and on foreign air carriers, estimates and periodic adjustments will be used to determine the amount of discrimination and compensatory charges therefor.

(b) For the purpose of determining the amount of excessive or otherwise discriminatory charges imposed upon United States flag air carriers by an entity:

(1) A service or use of airport or airway property includes, but is not limited to, fueling, food service, ticketing, baggage handling, runways, ramps, parking areas, navigational aids, communications facilities or any other service necessary and incidental to the conduct of a flight.

(2) An excessive or otherwise discriminatory charge includes, but is not limited to, a charge substantially above the cost of providing a service or any charge for a service that is substantially inferior to that which the United States flag air carrier could have provided for itself, at the same cost, by contract or otherwise (*see also* § 91.3).

(c) In determining the amount of compensatory charge:

(1) The total amount of excessive or otherwise discriminatory charges levied against United States flag air carriers will be estimated in dollars.

(2) The total volume of operations to the United States by air carriers of the nation concerned will be estimated for the succeeding six-month period.

(3) The total amount of excessive or otherwise discriminatory charges in paragraph (c)(1) of this section will be divided by the total volume of operations in paragraph (c)(2) of this section, and

(4) The quotient thus computed (which may be adjusted to reflect the type of aircraft) will constitute the compensatory charge to be collected as a condition to acceptance of the general declaration at the time of landing or takeoff of such air carriers of the nation concerned.

§ 91.13 Refunds.

(a) Where, in his discretion, the Secretary finds that good cause has been shown, the Secretary may authorize a refund of collected compensatory charges. For purposes of this section, good cause includes, but is not limited to, an error of fact, a miscalculation, or a determination that an original conclusion of entitlement was insufficient, invalid, erroneous or invalidated by subsequent events.

(b) Notwithstanding the provisions of § 91.9(e) the Secretary may suspend for a reasonable time the issuance of a certificate of entitlement upon a showing by a payor of compensatory charges that there is a substantial likelihood that the payor will make a showing of good cause under § 91.13(a).

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the issuance of a certificate of entitlement under § 91.9(e) or the distribution to United States flag air carriers of funds collected under this part shall be with prejudice to any claim for refund under this section.

PART 93—AIRCRAFT ALLOCATION

Sec.

93.1 Issuance of aircraft allocations.
93.3 Reporting requirements.

§ 93.1 Issuance of aircraft allocations.

From time to time, the Director, Office of Emergency Transportation, issues planning orders allocating aircraft to the Department of Defense, identified by FAA registration number, for the Civil Reserve Air Fleet Program, or as a reserve fleet for use in certain contingencies in the Civil Reserve Air Fleet Program of the Department of Defense. The current listing of aircraft allocations may be obtained upon request from the Director, Office of Emergency Transportation, Department of Transportation, Washington, D.C. 20590.

(Sec. 9, 80 Stat. 944; 49 U.S.C. 1657)

[32 FR 20778, Dec. 23, 1967, as amended by Amdt. 93-1, 33 FR 7821, May 29, 1968]

§ 93.3 Reporting requirements.

In the event any aircraft identified in the allocations in effect—

(a) Is destroyed or suffers major damage the owner or operator, or both, shall give immediate notice thereof to the Director, Office of Emergency Transportation; or

(b) Is sold, leased, or otherwise transferred, the transferor or owner, or both, shall give immediate notice thereof to the Director, Office of Emergency Transportation, together with full information concerning the identity of the transferee, the date and place of transfer, and the terms and conditions of the transfer.

(Sec. 9, 80 Stat. 944, 49 U.S.C. 1657)

[32 FR 20778, Dec. 23, 1967]

PART 95—ADVISORY COMMITTEES

Sec.

95.1 Applicability.
95.3 Definitions.
95.5 Use of advisory committees generally.
95.7 Industry advisory committees: Membership.
95.9 Meetings; other than industry advisory committees.
95.11 Meetings; industry advisory committees.
95.13 Antitrust laws.
95.15 Conflicts of interest statutes, orders, and regulations.

AUTHORITY: Sec. 9, 80 Stat. 944 (49 U.S.C. 1657); E.O. 11007, 3 CFR, 1959-1963 Comp., p. 573, unless otherwise noted.

SOURCE: 33 FR 467, Jan. 12, 1968, unless otherwise noted.

§ 95.1 Applicability.

(a) This part prescribes uniform regulations governing the formation and use of advisory committees by the Office of the Secretary of Transportation, the U.S. Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Urban Mass Transportation Administration, the National Highway Traffic Safety Administration, and the St. Lawrence Seaway Development Corporation. It does not apply to the National Transportation Safety Board.

(b) This part applies to advisory committees formed or used by the organizations named in paragraph (a) of this section. It also applies to those organizations whenever they affiliate with, participate in, or use similar advisory committees formed or used by other departments or agencies of the Executive Branch of the Government, unless specifically exempted under paragraph (c) of this section. Advisory committees whose membership includes "consultants and advisers" are subject to this part regardless of whether those members are considered to be Government employees on the days they attend committee meetings.

(c) This part does not apply to—

(1) Any advisory committee the purpose, composition, and operation of which is specified by statute, unless and to the extent that statute authorizes the President to prescribe regulations for the committee's formation and use.

(2) Any advisory committee composed wholly of representatives of State or local agencies or of charitable, religious, educational, civic, social welfare, or similar nonprofit organizations.

(3) Any local, regional, or national committee whose only function is to disseminate information for public agencies, or any local civil committee whose primary function is to perform a public service, other than giving advice or making recommendations to the Government.

[33 FR 467, Jan. 12, 1968, as amended by Amdt. 95-2, 35 FR 5331, Mar. 31, 1970; Amdt. 95-3, 36 FR 431, Jan. 13, 1971]

§ 95.3 Definitions.

For the purposes of this part—

(a) "Advisory committee" includes any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee, or other subgroup thereof, which is formed within the Department in the interest of obtaining advice or recommendations, or for any other purpose, and which is not composed wholly of officers or employees of the Government. It also includes any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or subgroup thereof, which is not formed within the Department, but only during the period it is being used by the Department in the same manner as a Government-formed advisory committee.

(b) "Industry advisory committee" includes any advisory committee composed predominately of members or representatives of a single industry or group of related industries, or any subdivision of a single industry, made on a geographic, service, or product basis.

(c) "Department" means Department of Transportation.

(d) "Secretary" means the Secretary of Transportation.

§ 95.5 Use of advisory committees generally.

(a) Advisory committees are formed to provide a means of obtaining advice, views, and recommendations of benefit to the operations of the Government from industrialists, businessmen, scientists, engineers, educators, and other public and private citizens whose experience and talents would not otherwise be available to the Department. An advisory committee may be used when its counsel is desired on matters under consideration by any part of the Department. Unless specifically authorized by law to the contrary, no advisory committee may be used for functions which are not solely advisory. Determinations of action to be taken with respect to matters upon which an advisory committee advises or recommends may be made only by a full-time, salaried officer or employee of the Government.

(b) An advisory committee may be established to serve the Department as a whole, the Office of the Secretary, any operating administration, any combination of the Office of the Secretary and the operating administrations, or the operating administrations collectively. However, no advisory committee may be formed or used unless (1) the committee is specifically authorized by law, or (2) the committee is specifically approved, in writing, by the Secretary or his designee, to be in the public interest in connection with the performance of duties imposed on the Department or any part of it.

§ 95.7 Industry advisory committees: Membership.

Each industry advisory committee must be reasonably representative of the group of industries, the single industry, or the product segment thereof to which it relates, taking into account the size and function of business enterprises in the industry or industries and their location, affiliation, and competitive status among other factors. Selection of industry members shall, unless otherwise provided by statute, be limited to persons actively engaged in operations in the particular industry, industries, or segments concerned, except in cases in which the Secretary or his designee considers that such a limitation would interfere with effective committee operations.

§ 95.9 Meetings; other than industry advisory committees.

(a) Meetings of an advisory committee, other than an industry advisory committee, may be held only at the call, or with the advance approval, of a full-time, salaried officer or employee of the Department, with an agenda formulated or approved by that officer or employee.

(b) Each meeting shall be chaired by, or be conducted in the presence of, a full-time, salaried officer or employee of the Government who is required to adjourn the meeting whenever he

considers it to be in the public interest.

(c) Minutes shall be kept of each meeting. As a minimum, the minutes must contain a record of the persons present, a description of the matter discussed and conclusions reached, and a copy of any report received, issued, or approved by the committee. The accuracy of all minutes must be certified to by a full-time, salaried officer or employee of the Government who was present during the meeting to which the minutes pertain.

(d) The Secretary or his designee may waive any requirement of this section in any case in which he determines that—

(1) Compliance with that requirement would interfere with the proper functioning of the committee or would be impracticable;

(2) Adequate provisions are made to assure otherwise that the operation of the committee is subject to Government control and purpose; and

(3) The waiver is in the public interest.

§ 95.11 Meetings; industry advisory committees.

(a) Meetings of an industry advisory committee may be held only at the call of a full-time, salaried officer or employee of the Department, with an agenda formulated by that officer or employee.

(b) Each meeting shall be chaired by a full-time, salaried officer or employee of the Government who is required to adjourn the meeting whenever he considers it to be in the public interest. The Secretary or his designee may waive the requirements of this paragraph in any case in which he determines that—

(1) Compliance with that requirement would interfere with the proper functioning of the committee or would be impracticable;

(2) Adequate provisions are made to assure otherwise that the operation of the committee is subject to Government control and purpose;

(3) The waiver is in the public interest; and

(4) The meeting will be conducted in the presence of a full-time, salaried officer or employee of the Government who is required to adjourn the meeting whenever he considers it to be in the public interest.

(c) A verbatim transcript shall be kept of the proceedings at each meeting, including the name of each person present, his affiliation, and the capacity in which he attended, except in any case in which the Secretary or his designee determines that a verbatim transcript would interfere with the proper functioning of the committee or would be impracticable and therefore waives the requirement as being in the public interest. In such a case the procedure prescribed in § 95.9(c) applies.

(d) No industry advisory committee may receive, compile, or discuss data or reports showing the current or projected commercial operations of any identified business enterprise.

[33 FR 467, Jan. 12, 1968, as amended by Amdt. 95-1, 33 FR 6913, May 3, 1968]

§ 95.13 Antitrust laws.

The activities of advisory committees are subject to the antitrust laws and committee members are not immune from prosecution under those laws. The Department of Justice takes the position that it retains complete freedom to institute proceedings, either civil or criminal, or both, in the event that any particular plan or course of action is used to accomplish unlawful private ends, and to institute civil actions to enjoin continuance of any act or practices found not to be in the public interest and persisted in after notice to desist. This part is intended to minimize the possibility of violating the antitrust laws. Industry representatives and Government personnel officially connected with advisory committees should be advised of the antitrust aspects of the committee activity.

§ 95.15 Conflicts of interest statutes, orders, and regulations.

There is a body of statutes, orders, and regulations prescribed by the President, the Secretary, and other authorities, dealing with conflicts of interest and designed to prevent any conflict between the official duties and status of Government officers and

employees and their private interest. Government officers and employees are required to comply with all applicable laws, orders, and regulations. Part 99 of this chapter sets forth a comprehensive list of the conflicts of interest statutes and guidelines for the employees of the Department to follow in the application of these statutes to part-time advisers and consultants to the Government. Any officer or employee appointed to serve on an advisory committee who has any doubt or question respecting a possible conflict of interest shall seek specific legal advice on his individual situation.

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General

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99.735–1 Purpose and policy.
99.735–3 Definitions.
99.735–5 Applicability.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

99.735–7 General.
99.735–9 Gifts, entertainment, favors, employment and reimbursement of expenses.
99.735–11 Outside employment and other activities.
99.735–13 Financial interests.
99.735–15 Disqualification arising from private financial interests.
99.735–17 Use of Government property or official title.
99.735–19 Misuse of information.
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99.735–23 Gambling, betting, or lotteries.
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Subpart C—Statements of Employment and Financial Interest

99.735–31 Employees required to submit statement.
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99.735–35 Supplementary statements.
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99.735–43 Confidentiality of employee's statement.
99.735–45 Effect of employee statements on other requirements.

Subpart D—Ethical and Other Conduct and Responsibilities of Special Government Employees

Sec.
99.735–51 Use of Government employment.
99.735–53 Use of inside information.
99.735–55 Coercion.
99.735–57 Gifts, entertainment, and favors.
99.735–59 Miscellaneous statutory provisions.
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Subpart E—Counseling; Interpretation; Review of Statements; Remedial Actions

99.735–71 Interpretation and advisory service.
99.735–73 Review of statements.
99.735–75 Remedial actions.
99.735–77 Appeals.

Subpart F—Responsibilities of the Government Employee and Special Government Employee Following Departure From Government Service

99.735–81 Post-employment duties and responsibilities.

APPENDIX A—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTION 208(a) OF TITLE 18, UNITED STATES CODE.
APPENDIX B—MISCELLANEOUS STATUTORY PROVISIONS RELATING TO EMPLOYEE CONDUCT.
APPENDIX C—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST.
APPENDIX D—EXTRACT FROM APPENDIX C OF CIVIL SERVICE FEDERAL PERSONNEL MANUAL SYSTEM ON SPECIAL GOVERNMENT EMPLOYEES (INCLUDING GUIDELINES FOR OBTAINING AND UTILIZING THE SERVICES OF SPECIAL GOVERNMENT EMPLOYEES).
APPENDIX E—STATUTES REGULATING POST-EMPLOYMENT RESPONSIBILITIES OF GOVERNMENT AND SPECIAL GOVERNMENT EMPLOYEES.

AUTHORITY: Sec. 9, 80 Stat. 944 (49 U.S.C. 1657); E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306, unless otherwise noted.

SOURCE: Amdt. 99–10, 42 FR 3119, Jan. 14, 1977, unless otherwise noted.

Subpart A—General .

§ 99.735–1 Purpose and policy.

(a) This part sets forth standards of ethical and other conduct, and reporting requirements, for employees and special Government employees of the

Department of Transportation. It implements Executive Order 11222 (30 FR 6469) and Part 735 of Chapter I of Title 5 of the Code of Federal Regulations (30 FR 12529), as amended (33 FR 12487). The standards and requirements are appropriate to the particular functions and activities of the Department.

(b) Since the efficient operation of the Department requires continued public confidence in its employees, acts which may result in the appearance of a conflict of interest also are governed by this part. The absence of a specific published standard of conduct covering an act which would tend to discredit the Department, and/or an employee or special Government employee of the Department does not mean that such an act is condoned, is permissible, or would not call for the result in corrective or disciplinary action.

(c) The President has stated the basic philosophy of conduct for those who carry out the public business:

> Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or advisor of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

Personnel of the Department are expected to adhere to the President's message and to standards of conduct that will reflect credit on the Government.

§ 99.735-3 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

"Department" means the Department of Transportation, including the Office of the Secretary, nonappropriated fund activities, and the following operating administrations:

(a) The U.S. Coast Guard;

(b) The Federal Aviation Administration;

(c) The Federal Highway Administration;

(d) The Federal Railroad Administration;

(e) The National Highway Traffic Safety Administration;

(f) The Urban Mass Transportation Administration;

(g) The St. Lawrence Seaway Development Corporation; and

(h) The Research and Special Programs Administration..

"Employee" means an officer or employee of the Department and an active duty officer or enlisted member of the Coast Guard, but does not include any special Government employee.

"Includes" means "includes but is not limited to."

"May" is used in a permissive sense to state authority or permission to do the act prescribed.

"Secretary" means the Secretary of Transportation or any person to whom he has delegated his authority in the matter concerned.

"Shall" is used in an imperative sense.

"Special Government employee" is a "special Government employee" of the Department as defined in section 202 of Title 18, United States Code, which includes, but is not limited to "* * * an officer or employee of the executive branch of the United States Government, of any independent agency of the United States * * * who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermitent basis, * * *" "* * * a Reserve officer of the Armed Forces * * * unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training," and "a Reserve officer of the Armed Forces * * * who is serving involuntarily. * * *"

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977, as amended by Amdt. 99-13, 43 FR 54251, Nov. 21, 1978]

§ 99.735-5 Applicability.

(a) This part applies to the following:

(1) Each employee of the Department.

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(2) Each special Government employee of the Department.

(3) Each civilian employee or member of an armed force who is detailed to the Department.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 99.735–7 General.

(a) Each employee shall avoid any action, whether or not specifically prohibited by this part, which might result in or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside of official channels [or not in accordance with applicable published procedures or statutory requirements; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(b) Employees shall not engage in criminal, dishonest, infamous, immoral, or notoriously disgraceful conduct, or any conduct prejudicial to the Government.

§ 99.735–9 Gifts, entertainment, favors, employment and reimbursement of expenses.

(a) Except as provided in paragraphs (b) through (e) of this section, an employee shall not solicit, or accept, directly or indirectly, any gift, gratuity, favor, entertainment, food, lodging, loan, or other thing of monetary value, from a person or employer of a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relationships with the Department.

(2) Conducts operations or activities that are regulated by the Department, or

(3) Has interests which may be substantially affected by the performance or nonperformance of that employee's official duties.

(b) Notwithstanding paragraph (a) of this section, an employee may:

(1) Accept a gift, gratuity, favor, entertainment, loan, or other thing of value when the circumstances make it clear that an obvious family relationship rather than the business of the persons concerned is the motivating factor;

(2) Accept food or refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting, or on an inspection tour if the employee is properly in attendance and there is not a reasonable opportunity to pay;

(3) Accept a loan from a bank or other financial institution on customary terms to finance proper and usual activities of the employee such as a home mortgage loan; or

(4) Accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, or other items of nominal intrinsic value.

(c) In seeking employment with an organization described in paragraph (a) (1), (2) and (3) of this section, an employee must be aware of the great potential for the appearance of a conflict of interest, and Federal law which prohibits certain kinds of employment. Accordingly, in soliciting employment an employee shall not:

(1) Solicit such employment if acceptance thereof would cause a violation of section 207 or 208 of title 18 of the U.S. Code;

(2) Permit the prospect of employment otherwise permitted by these regulations to influence the performance or nonperformance of his or her duties;

(3) Communicate or use information of particular interest to the prospective employer even if such information is available to the public generally; or

(4) Indicate, directly or indirectly, that he or she would be able to offer information or special relationships with officials of the Department.

(d) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself. An employee who violates this paragraph shall be removed from Government

service in accordance with 5 U.S.C. 7351. However, this paragraph does not prohibit a voluntary gift of nominal value or the solicitation or making of a voluntary donation in a nominal amount to a gift made on a special occasion such as marriage, illness, resignation, retirement, or transfer.

(e) An employee shall not accept a gift, present, decoration, medal, badge or other emblem from a foreign government or from an agent acting on behalf of a foreign government; however, this section does not prohibit an employee from either (1) accepting and retaining a gift of nominal value given as a souvenir or mark of courtesy, or (2) accepting of a gift of more than nominal value when it appears that to refuse such gift would cause embarrassment, or offense, or adversely affect the foreign relations of the United States, provided that such gift is accepted on behalf of the United States and shall be reported to the Department Counselor in writing and used or disposed of as the property of the United States. This subsection is adopted pursuant to Article I, Section 9 of the United States Constitution and section 7342 of Title 5 of the U.S. Code.

(f) Except as provided in 5 U.S.C. 4411, an employee shall not accept reimbursement from a non-Federal source for expenses incurred in connection with travel or official business.

(g) The Department may accept reimbursement for an employee's expenses incurred in connection with travel on official business except where the acceptance of reimbursement by the employee would constitute a conflict or apparent conflict of interest.

(h) An employee shall not accept reimbursement from any private source for expenses incurred in connection with voluntary travel by the employees on their own time to the extend that such reimbursement exceeds ordinary and reasonable transportation and subsistence costs or otherwise constitutes a conflict or apparent conflict of interest.

§ 99.735–11 Outside employment and other activities.

(a) An employee shall not engage in any outside employment or other outside activity which is not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include:

(1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest, and

(2) Outside employment which tends to impair mental or physical capacity to perform Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Although employees are encouraged to engage in teaching, lecturing and writing that is not prohibited by law, Executive Order 11222, Civil Service Commission regulations or this part, an employee shall not engage in such activities under circumstances:

(1) Which might result in a conflict or apparent conflict of interest;

(2) Which depend on information or official data obtained as a result of government employment, except when the information has been made available to the general public, or when an appropriately designated official gives written authorization for use of nonpublic information following a determination that the basis for the use is in the public interest; or

(3) Which tend to impair the employee's mental or physical capacity to perform government duties and responsibilities in an acceptable manner.

(d) *Honoraria.* (1) A Presidential appointee covered by Section 401(a) of Executive Order 11222 shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Department, or which draws substan-

tially on official data or ideas which have not become public information.

(2) Any employee, other than those described in paragraph (d)(1) of this section, may receive compensation or other thing of monetary value for any lecture, discussion, writing or appearance the subject matter of which is devoted to the responsibilities, programs or operations of the Department, or which draws on official data or ideas of the Department, provided that any such employee shall disclose to the General Counsel of the Department within five business days following the event, the source, amount or value and data of receipt of all compensation or other thing of monetary value. All disclosures under this section shall be subject to public inspection and availability.

(e) If an activity permissible under paragraph (c) or (d) of this section is to be undertaken as official duty, expenses will be borne by the Department, and the employee shall not accept compensation or allow his or her expenses to be paid by the person or group under whose auspices the activity is being performed. If it is determined that an activity under paragraph (c) or (d)(2) is to be undertaken in a private capacity, the employee may not use duty hours or Government property including equipment and supplies, for that purpose, but may accept compensation, and may subject to § 99.735–17(b), use his or her official title only if it is made clear that he or she does not represent the Department.

(f) [Reserved]

(g) This section does not preclude an employee from:

(1) Participation in the activities of National or State political parties not proscribed by law (5 U.S.C. 7321–7327).

(2) Participation in the affairs of, or acceptance of an award given or to be given on a regular basis for, a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civil organization; or

(3) Outside employment that is not otherwise prohibited.

[Amdt. 99–10, 42 FR 3119, Jan. 14, 1977; 42 FR 5359, Jan. 28, 1977]

§ 99.735–13 Financial interests.

(a) An employee shall not have a direct or indirect financial interest that conflicts, or appears to conflict, with his Government duties and responsibilities. In any case in which such a question of financial interest arises the procedures set forth in § 99.735–15 shall be followed.

(b) An employee shall not engage in, directly or indirectly, a financial transaction as a result of, or relying primarily on, information obtained through his Government employment if that information has not been made available to the general public.

(c) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government as long as it is not prohibited by law, Executive Order 11222, or this part.

(d) All employees, whether or not subject to the disclosure requirements of Appendix C, shall promptly report within ten days of such events, all transactions involving real or personal property in which the employee has an interest and in which the Department is a buyer, seller, lessee, lessor or otherwise acquires or divests itself of an interest in such property.

§ 99.735–15 Disqualification arising from private financial interests.

(a) Section 208 of title 18, United States Code, provides criminal penalties for any employee who participates personally and substantially, as a Government employee, in certain matters in which, to the employee's knowledge, the employee, the employee's spouse, minor children, or certain other persons, have a financial interest. In administering this section and implementing section 208 of title 18, policies set forth in § 99.735–13 are controlling. For exemptions from section 208, see paragraph (h) of this section.

(b) The kinds of participation covered by section 208 include but are not limited to, any decision, approval, disapproval, recommendation, investigation or furnishing of advice, in any proceeding, application, request for

ruling or other determination, contract, claim controversy, charge, accusation, or other particular matter. Section 208 of title 18 United States Code applies to these matters when a financial interest therein is possessed by the participating employee, his spouse, minor child, or partner, or by an organization in which the employee is serving as an officer, director, trustee, partner or employee, or by any person or organization with which the employee is negotiating or has arrangements concerning prospective employment.

(c) The words "other particular matter" in the first sentence of paragraph (b) of this section are intended to refer to matters in which the employee concerned may reasonably anticipate that his participation or advice will have a direct and predictable effect on the financial interest referred to in the second sentence of paragraph (b) of this section. While not restricted to matters involving a specific party or parties, the words "other particular matter" nevertheless do not necessarily include rule making of wide applicability, the formulation of general policy or standards, or similar matters of broad scope.

(d) Before an employee may participate in a matter to which he or she knows, or should reasonably know, section 208 applies he or she must either cause the financial interest involved to be divested or request a determination of the propriety of participation in such matter by informing in writing the official for his or her appointment of the nature and circumstances of the matter and the financial interest involved.

(e) After examining the information submitted, the said appointing official shall:

(1) Cause the employee to be relieved from participation in the matter and reassign it to another employee who is not subordinate to the relieved employee; or

(2) Approve the employee's participation upon determining in writing (a copy of which shall be placed in the employee's personnel file) that the interest or the participation involved is not so substantial as to be likely to affect the integrity of the services the Government may expect from the employee thereby making section 208 inapplicable to the matter; or

(3) Recommend the reassignment of the employee; or

(4) If none of these alternatives is feasible, direct the employee to cause the financial interest to be divested so that it no longer comes within the scope of this section.

(f) In any case in which a responsible official has reason to believe that an employee may have an interest that would be disqualifying under this section, said responsible official shall discuss the matter with the employee. If he finds that the interest exists, he may take any of the actions stated in paragraph (e) of this section.

(g) A holding in a trust whose terms direct the trustee to manage solely in accord with his own judgment and not to disclose to the beneficiary, in any manner, the specific dealings and holdings (a so-called "blind trust") may be exempted from the prohibitions of this section, when an employee or a member of the employee's household is the beneficiary, upon a finding by the General Counsel of the Department that the employee is in fact unaware or is unable to determine what interests are held in the trust. Thus, a "blind trust" consisting of an interest in only one company or industry will not be exempted if the employee could reasonably be expected to assume that the trustee has not divested the trust of that interest.

(h) Exemptions. Information concerning categories of financial interests which are exempted from the prohibitions of section 208(a) of title 18, United States Code, as being too remote or too inconsequential to affect the integrity of an employee's interest in a matter, are set forth in Appendix A.

[Amdt. 99–10, 42 FR 3119, Jan. 14, 1977; 42 FR 5359, Jan. 28, 1977]

§ 99.735–17 Use of Government property or official title.

(a) An employee shall not, directly or indirectly, use or allow the use of Government property of any kind, including property leased to the Government, for other than an officially ap-

proved activity. Each employee has a positive duty to protect and conserve Government property, including all equipment, supplies, and other property.

(b) An employee shall not directly or indirectly, use or allow the use of his title or position in connection with any commercial enterprise or in endorsing any commercial product or service.

§ 99.735–19 Misuse of information.

Except as provided in § 99.735–11(d) an employee shall not for the purpose of furthering a private interest, directly or indirectly, use or allow the use of official information obtained through or in connection with his Government employment, if that information has not been made available to the general public.

§ 99.735–21 Indebtedness.

Each employee shall pay his just financial obligations in a proper and timely manner. For the purposes of this section "just financial obligations" means those imposed by law such as Federal, State, or local taxes or those that are recognized as such by the employee or reduced to a judgment by a court. "In a proper and timely manner" means in a manner which, considering all circumstances, will not reflect adversely on the Government as employer. The Department will not determine the validity or amount of a disputed debt and will not act to collect such debts, except as provided in the Federal Wage Garnishment Law (42 U.S.C. 659).

§ 99.735–23 Gambling, betting, or lotteries.

An employee shall not, while on Government owned or leased property, or while on duty for the Government, participate in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in buying or selling a numbers slip or ticket. However, this section does not prevent an employee from engaging in activities:

(a) Necessitated by his law enforcement duties; or

(b) Under section 3 of the Executive Order 10927, relating to fundraising activities for national voluntary agencies, or similar activities approved by the Department. Employees are reminded that illegal gambling is prohibited by the provisions of § 99.735(b), supra.

§ 99.735–25 Miscellaneous statutory provisions.

It shall be the duty of each employee to become acquainted with the laws which relate to ethical and other conduct as an employee of the Department and of the Government. The attention of employees is specifically directed to the statutory provisions set forth in Appendix B.

Subpart C—Statements of Employment and Financial Interest

§ 99.735–31 Employees required to submit statement.

(a) Unless required to report to the Chairman of the Civil Service Commission under section 401(a) of Executive Order 11222, each of the following employees shall submit a statement of employment and financial interest on a form provided by the Department:

(1) Each employee paid at a level of the Executive schedule under subchapter II of Chapter 53 of Title 5, United States Code.

(2) Each employee classified as GS–13 or above under section 5332 of Title 5, United States Code or a comparable pay level under another authority, or in military pay grade 0–5 or above, who is in a position identified in Appendix C as a position the incumbent of which is responsible for making a Government decision or taking a Government action in regard to:

(i) Contracting or procurement;

(ii) Administering or monitoring grants or subsidies;

(iii) Regulating or auditing private or other non-Federal enterprise; or

(iv) Other activities where the decision or action has an economic impact on the interests of a non-Federal enterprise.

(3) Each employee classified at GS–13 or above under section 5332 of Title 5, United States Code or a comparable pay level under another authority, or in military pay grade 0–5 or above,

who is in a position identified in Appendix C as having duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of Title 18, Executive Order 11222, and this part; and

(4) Each employee classified below GS–13 under section 5332 of Title 5, United States Code or at a comparable pay level under another authority, or in a military pay grade below 0–5, who is in a position which otherwise meets the criteria in paragraph (a)(2) or (3) of this section, on the basis that the inclusion has been specifically justified in writing to the Civil Service Commission as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflicts-of-interest situation.

(b) The Assistant Secretary for Administration and the head of each operating administration shall ensure that the portion of Appendix C enumerating positions within their respective jurisdictions is current, accurate and that the incumbents of those positions enumerated file their financial interest statements with the appropriate official. To discharge their responsibilities under this paragraph, the Assistant Secretary for Administration and the head of each operating administration shall, as necessary, amend the portion of Appendix C concerning positions within their jurisdiction, obtain necessary clearance from the Civil Service Commission for positions at GS–12 and below and publish such amendments in the FEDERAL REGISTER. At the time of such publication in the FEDERAL REGISTER, a copy of all such amendments shall be transmitted to the General Counsel.

(c) Any employees in a position which meets the criteria in paragraph (a)(2) of this section may be excluded from the reporting requirements of this section whenever the Secretary, or his designee, or the head of an operating administration or his designee, as appropriate, determines that the duties of the position are at such a level of responsibility that the submission of a statement is not necessary because of the degree of supervision and review and the remote or inconsequential effect on the integrity of the Government.

(d) Information concerning financial interests which have been exempted under Appendix A from the prohibitions of section 208(a) of title 18, United States Code, shall nevertheless be included in the statement required by this section.

§ 99.735–33 Time and place for submission of employee statements.

(a) Each employee who is subject to the reporting requirements of § 99.735–31 shall submit an employment and financial interest statement not later than:

(1) Forty-five days after the effective date of this part, if employed by the Department on or before that date; or

(2) Thirty days after entering on duty, but not earlier than 30 days after the effective date of this part, if appointed after that effective date.

(3) Thirty days after the occurrence of any event, transaction or any other thing which obligates an employee not otherwise required to submit a statement, to file such statement, but not earlier than thirty days after the effective date of this part.

(b) Each employee who is subject to the reporting requirements of § 99.735–31 shall submit his employment and financial interest statement, including supplements thereto, as follows:

(1) Heads of operating administrations and employees of the Office of the Secretary shall submit their statements to the Department Counselor for review.

(2) Other employees shall submit their statements to an official designated by the head of their administration for review. The official designated must be at level to which a Deputy Counselor has been assigned and higher in the chain of authority than the employee whose statement is being reviewed.

§ 99.735–35 Supplementary statements.

(a) Each employee required to file a statement shall, not later than July 31 of each year, file a supplementary

statement, showing, as of June 30 of that year, any change in, or addition to, the information contained in his statement of employment and financial interest and call attention to any information previously unreported that may present a conflict because of different job functions. If no change or addition occurs, a negative report is to be filed stating that there have been no changes or additions. In addition all supplementary statements filed under this section shall contain a record of any changes which occurred at any time during the year for which the report is filed. Notwithstanding the filing of the annual statement required by this section, each employee shall at all times avoid acquiring any financial interest that could result, or taking any action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code, or Subpart B of this part.

(b) The head of each operating administration and the Assistant Secretary for Administration shall notify employees within their respective jurisdictions of the requirement to file a supplementary statement by July 31 of each year. However, no employee shall be relieved of the responsibility to file a timely supplementary statement on the ground of failure to receive individual notification.

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977; 42 FR 5359, Jan. 28, 1977]

§ 99.735–37 Interest of employee's relatives.

Any interest of a spouse, minor child, or other relative who is a resident of the employee's household is considered to be an interest of the employee.

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977; 42 FR 5359, Jan. 28, 1977]

§ 99.735–39 Information not known by employee.

If any information required to be included on a statement of employment and financial interest or a supplementary statement, including any holding placed in trust, is not known to the employee but is known to another person (such as a trustee), the employee shall request that other person to submit the information on his or her behalf.

§ 99.735–41 Information not required.

This subpart does not require an employee to submit on a statement of employment and financial interest or supplementary statement any information relating to his connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. For the purposes of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are considered to be "business enterprises" and are required to be included in the employee's statement of employment and financial interest.

§ 99.735–43 Confidentiality of employee's statement.

(a) Information provided in each statement of employment and financial interest and each supplementary statement shall be held in confidence. The reviewing officials, counselor, deputy counselors, and others who receive statements are responsible for maintaining them in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purposes of this part. Information may not be disclosed to any person outside the Department, except as the Civil Service Commission or the Secretary may determine for good cause shown.

(b) Each statement of employment and financial interest and each supplementary statement shall be maintained in a file as prescribed by the office or operating administration concerned, in accordance with the Privacy Act of 1974 (Pub. L. 93-579; 5 U.S.C. 552a(e)(11) and guidelines issued thereunder.

§ 99.735–45 Effect of employee statements on other requirements.

Statements of employment and financial interest and supplementary

statements required of employees and special Government employees are in addition to, and are not a substitute for or in derogation of, any similar requirements imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee or special Government employee does not permit said employee or any other person to participate in a matter in which that employee or the other person's participation is prohibited by law, order, or regulation.

Subpart D—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 99.735–51 Use of Government employment.

No special Government employee may use his Government employment for a purpose which is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has marital, business, or financial ties.

§ 99.735–53 Use of inside information.

A special Government employee shall not use inside information obtained as a result of Government employment for private gain for self or another person, whether by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom there is a marital, family, business, or financial tie. However, the section does not prevent a special Government employee from using inside information for the purpose of teaching, lecturing, or writing if an appropriately designated official authorizes, in writing, the use of such information upon a determination that any such use is in the public interest. For the purposes of this section, "inside information" means information obtained under Government authority which has not become a part of the body of public information.

§ 99.735–55 Coercion.

No special Government employee may use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom there is a marital, family, business, or financial tie.

§ 99.735–57 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, no special Government employee shall not, while employed by the Department, receive or solicit from any person having business with the Department anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom there is a marital, family, business, or financial tie.

(b) The exceptions authorized for employees under § 99.735-9 shall also apply to special Government employees.

§ 99.735–59 Miscellaneous statutory provisions.

Each special Government employee shall become acquainted with the statutes referred to in § 99.735-25 that relate to conduct as a special Government employee of the Department. Appendix D of this part explains the effect of the conflict of interest statutes on special Government employees. The Department follows the guidelines set forth in Appendix D of this part for obtaining and using the services of special Government employees.

§ 99.735–61 Specific regulations for special Government employees.

(a) Each special Government employee who is employed as an expert or consultant shall submit a statement of employment and financial interest, on a form provided by the Department, in the manner prescribed in §§ 99.735-33(b) and 99.735-35 no later than at the time of employment.

(b) Each special Government employee not employed as an expert or consultant shall submit a statement of employment and financial interest on a form provided by the Department, as provided in paragraph (a) of this section, unless an appropriate waiver is issued to him by the office or oper-

ating administration in which he or she is employed based upon a finding that the duties of his position are of such a nature and at such a level of responsibility that the submission of a statement by the special Government employee is not necessary to protect the integrity of the Government.

(c) For the purposes of this section, the words "consultant" and "expert" have the meaning given to them by chapter 304 of the Federal Personnel Manual, but do not include:

(1) A physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients; or

(2) A veterinarian whose services are procured to provide care and service to animals.

(d) Each special Government employee shall keep his statement current throughout his employment by the Department by submitting supplementary statements within five days after a change required to be reported occurs.

(e) Each statement of employment and financial interest and each supplementary statement of a special Government employee shall be held in confidence and maintained in the same manner as prescribed for statements submitted by employees.

Subpart E—Counseling; Interpretation; Review of Statements; Remedial Actions

§ 99.735–71 Interpretation and advisory service.

(a) The General Counsel of the Department shall act as the Department Counselor and serves as the Department's designee to the Civil Service Commission on matters covered by this part and Part 735 of Chapter I of Title 5 of the Code of Federal Regulations. The Department Counselor is responsible for coordinating the Department's counseling services provided under paragraph (b) of this section, for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part and Part 735 of Chapter I of Title 5, Code of Federal Regulations are available to the Deputy Counselors designated in paragraph (b) of this section and may exercise the authority of the Secretary in any matter covered by this part.

(b) The following are designated as Deputy Counselors for the purpose of providing authoritative counseling and interpretations to employees and special Government employees who require advice and guidance on questions of conflicts of interest or any other matters of legal import covered by this part:

(1) The Assistant General Counsel for Operations and Legal Counsel, Office of the General Counsel.

(2) The chief legal officer of each operating administration of the Department, and his designees.

(c) Counseling on other ethical matters covered by this part will be provided by personnel specifically designated by the Assistant Secretary for Administration for employees in the Office of the Secretary, and by the head of the operating administration concerned, for employees of that administration.

(d) The Assistant Secretary for Administration shall ensure that each employee and special Government employee is furnished a copy, and a clear and comprehensive summary of these regulations within thirty days after approval of this part and within thirty days after approval of any amendments thereto. He shall also ensure that sufficient quantities are available to furnish each new employee and special Government employee a copy at the time of his or her entrance on duty.

§ 99.735–73 Review of statements.

(a) Each statement of employment and financial interest submitted under this part shall be promptly reviewed by the official authorized to receive that statement.

(b) Procedures governing the review of statements of employment and financial interest established by the office or operating administration concerned shall provide that:

(1) Whenever the review discloses an actual, apparent or alleged conflict of interest, the employee concerned is entitled to an opportunity to explain.

(2) If an actual, apparent or alleged conflict is not resolved on review by the explanation made by the employee concerned, the information pertaining to the matter shall be submitted to the head of the operating administration concerned or the Secretary, in the case of any employee of the Office of the Secretary.

(3) The resolution of a conflict or apparent conflict of interest either on review or after submittal under paragraph (b)(2) of this section shall be effected promptly so that the conflict or appearance of conflict is ended. The resolution of the conflict or appearance of conflict may be accomplished by one or more means, including any means listed in paragraph (b) of § 99.735–75. The resolution, whether by disciplinary action or otherwise, will be effected in accordance with applicable laws, Executive orders, and regulations.

(c) After review of a statement of employment and financial interest has been completed, the reviewing official shall ensure that it is filed and protected from disclosure as required by § 99.735–43.

§ 99.735–75 Remedial actions.

(a) A violation of this part by an employee or special Government employee may, in addition to any other penalty prescribed by law, be cause for appropriate disciplinary action by the Department.

(b) If, after consideration of the explanation provided by the employee or special Government employee concerned under § 99.735–73, it is determined that remedial action is required, immediate action shall be taken to end the conflict or appearance of conflict of interest. Remedial action may include:

(1) Divestment by the employee or special Government employee of his conflicting interest;

(2) Disqualification for a particular assignment;

(3) Changes in assigned duties; or

(4) Disciplinary action.

Remedial action, including disciplinary action where appropriate, shall be taken in accordance with applicable laws, Executive Orders, and regulations after consultation with the Department Counselor. When remedial action is completed, the person taking that action shall inform the Department Counselor, or deputy counselor, as appropriate.

§ 99.735–77 Appeals.

(a) Any employee who believes that his or her position has been improperly included as one requiring the submission of a statement of employment and financial interest is entitled to have that inclusion reviewed under the employee grievance procedures applicable to the part of the Department in which employed.

(b) An employee has the right to appeal a determination requiring remedial or disciplinary action under this part. Such appeal shall be initiated in writing within ten days. Original determinations of the deputy counselors, or their designees, and the Assistant Secretary for Administration shall be appealed to the Departmental Ethics Counselor whose decision shall be final. Original determinations of the Departmental Ethics Counselor shall be appealed to the Secretary whose decision shall be final.

Subpart F—Responsibilities of the Government Employee and Special Government Employee Following Departure From Government Service

§ 99.735–81 Post-employment duties and responsibilities.

The duties and obligations of a Government employee (or a special Government employee) do not end when government service terminates by retirement, resignation, or for any other reason. In fact the U.S. Code sets forth specific criminal penalties for certain activities by former Government employees. To summarize broadly, section 207 of Title 18, U.S. Code, prohibits a former Government employee from acting as agent or attorney in various types of proceedings and matters of behalf of a non-Government party when the employee was involved in the subject matter while working for the Government. The duration and nature of the prohibitions depend in part on the depth of the

employee's involvement in the matter while in Government service. Section 208 of the same title relates to activities performed while a Government employee that benefit an employee's prospective private employer. All Government employees and special Government employees should become familiar with the provisions of the two statutory sections cited, which have been made a part of this regulation as Appendix E, so that they will be aware of the restrictions which might affect them upon their termination from the Government service.

Appendix A—Categories of Financial Interests Exempted From the Prohibitions of Section 208(a) of Title 18, United States Code

I. (a) Pursuant to the authority of section 208(b) of Title 18, United States Code, the following are exempted from the prohibitions of section 208(a) of Title 18, United States Code, because they are too remote or too inconsequential to affect the integrity of an employee's services in any matter in which he may act in his governmental capacity.

(1) Any holding in a widely held mutual fund, or regulated investment company, which does not specialize in an industry in which the possibility of conflict arise.

(2) Continued participation in a bona fide pension, retirement, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plans are vested and require no additional services by him or further payments to the plans by the organization with respect to the services of the employee. In addition, to the extent that the welfare or benefit plan is a profit sharing or stock bonus plan, this exemption does not apply and the procedures prescribed in § 99.735-15c (c) through (e) will apply to the interest of that employee in the plan.

Appendix B—Miscellaneous Statutory Provisions Relating to Employee Conduct

The following is a list of statutory provisions to which the attention of each employee is specifically directed by § 99.735-25. The list does not include specific laws relating to ethical or other conduct in individual situations not applicable generally to the employees of the Department.

(a) House Concurrent Resolution 175, 85th Congress, 2nd session, 72 Stat. B12, the "Code of Ethics for Government Service".

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination of personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibitions against political activities in Subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(q) The prohibition against soliciting funds for, or giving of gifts to an official superior (5 U.S.C. 7351).

(r) The statutory provisions setting forth the prohibitions on an employee or special government employee after termination of Government service (18 U.S.C. 207, 208).

(s) The statutory provisions in the Federal Election Act (2 U.S.C. 4411) limiting the amount of honoraria which can be accepted by a Federal employee.

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977; 42 FR 5359, Jan. 28, 1977]

Appendix C—List of Employees Required to Submit Statements of Employment and Financial Interest

I. Office of the Secretary of Transportation

Special Assistant to the Secretary
Regional Representative of the Secretary of Transportation
Special Assistant to the Deputy Secretary
Executive Assistant to the Deputy Secretary
Special Assistant to the Deputy Under Secretary
Assistant to the Deputy Under Secretary for Budget and Program Review
Executive Secretary
Deputy Executive Secretary
Special Assistant to Executive Secretary
Chairman, Contract Appeals Board
Member, Contract Appeals Board
Director, Office of Civil Rights
Equal Opportunity Specialist, GS-13/15, engaged in Contract Compliance Review
Director, Office of Planning and Program Review
Director, Office of Budget
Director, Office of Public Affairs
Deputy Director, Office of Budget
Assistant Director of for Communications Planning and Programming
Assistant Director for Communication Coordination
Assistant Director for Public Information
Director, Office of Deepwater Ports
Deputy Director, Office of Deepwater Ports
Deputy Director, Office of Planning and Program Review

Office of the General Counsel

Deputy General Counsel
Assistant General Counsel
Special Assistant to the General Counsel
Special Assistant for Environmental Affairs Patent Counsel
Chairman, Board of Correction of Military Records
Executive Secretary, Board of Correction of Military Records

Office of the Assistant Secretary for Policy and International Affairs

Deputy Assistant Secretary
Deputy Assistant Secretary for Policy and Program Development
Director Management Staff
Special Assistant to the Assistant Secretary
Director, Office of Transportation Systems Analysis and Information
Deputy Director, Office of Transportation Systems Analysis and Information
Director, Office of Transportation Planning
Director, Office of Transportation Economic Analysis
Deputy Director, Office of Transportation Economic Analysis
Chief, Industry and Financial Analysis
Director, Office of International Transportation Programs
Deputy Director, Office of International Transportation Programs
Chief, International Cooperation Division
Chief, Technical Assistance Division
Director, Transportation Energy Policy Staff
Director, Air Transportation Policy Staff
Deputy Director, Air Transportation Policy Staff
Director, Office of Transportation Regulatory Policy
Chief, Regulatory Coordination Division
Chief, Regulatory Rates Division
Chief, Regulatory Analysis Division

Office of the Assistant Secretary, Environment, Safety and Consumer Affairs

Deputy Assistant Secretary
Executive Officer
Director, Office of Safety Affairs
Deputy Director, Office of Safety Affairs
Assistant Director, for Pipeline Safety Policy
Assistant Director, of Hazardous Materials Safety Policy
Director, Office of Consumer Affairs
Director, Office of Transportation Security
Director, Office of Facilitation
Director, Office of Environmental Affairs

Office of the Assistant Secretary for Administration

Deputy Assistant Secretary
Director, Office of Personnel and Training
Deputy Director, Office of Personnel and Training
Director, Office of Management Systems
Deputy Director, Office of Management Systems
Director, Office of Administrative Operations
Chief, Procurement Operations Division
Contract Specialist, GS-13/15
Chief, Publishing and Graphic Division
Printing Officer
Director, Office of Installations and Logistics
Deputy Director, Office of Installations and Logistics
Procurement Officer
Procurement Analyst, GS-13/15
Program Analyst
Supply Systems Analyst
Chief, Facilities Management Division
Policy and Programs Officer
Deputy Director, Office of Administrative Operations
Director, Office of Audits
Deputy Director, Office of Audits
Supervisory Auditor
Auditor, GS-13/15

OFFICE OF THE ASSISTANT SECRETARY FOR CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

Deputy Assistant Secretary
Special Assistant to the Assistant Secretary
Director, Office of Congressional Relations
Congressional Relations Officers, GS-13/15
Director, Office of Intergovernmental Affairs
Intergovernmental Liaison Officer
Community Assistance Coordinator

II. FEDERAL AVIATION ADMINISTRATION

Associate Administrators
Deputy Associate Administrators

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

Chief, Program Review Staff

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR POLICY DEVELOPMENT AND REVIEW

Aviation Policy Specialist

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR AIR TRAFFIC AND AIRWAY FACILITIES

Special Assistant
Chief, Program Management Staff
Program Analyst, GS-14/15

OFFICE OF CHIEF COUNSEL

Chief, Counsel
Deputy Chief Counsel
Assistant Chief Counsel
Special Assistant to the Chief Counsel
Special Counsel for Regulations
Deputy Assistant Chief Counsel
Branch Chiefs
Chief, Legislative Staff
Chief, Environmental Law Staff
Attorney Advisor, Procurement Legal Division, GS-13/15 ⊖

OFFICE OF CIVIL RIGHTS

Director
Deputy Director
Civil Rights Specialist, GS-13 and above, engaged in Contract Compliance Review

OFFICE OF PUBLIC AFFAIRS

Assistant Administrator

OFFICE OF AVIATION SAFETY

Assistant Administrator

OFFICE OF GENERAL AVIATION

Assistant Administrator
Deputy Assistant Administrator

OFFICE OF AVIATION MEDICINE

Federal Air Surgeon
Deputy Federal Air Surgeon
Chief, Aeromedical Applications Division
Chief, Research Planning Branch

OFFICE OF INTERNATIONAL AVIATION AFFAIRS

Assistant Administrator
Deputy Assistant Administrator

OFFICE OF AVIATION POLICY

Director
Deputy Director
Chief, Policy Development Division
Chief, Policy Analysis Division
Financial Economist

OFFICE OF INVESTIGATIONS AND SECURITY

Director
Deputy Director
Chief, Investigations Division

OFFICE OF AVIATION SYSTEM PLANS

Director
Deputy Director ⊖
Chief, System Requirements Division
Chief, Plans Development Division
Chief, Planning Support Staff

OFFICE OF ENVIRONMENTAL QUALITY

Director
Deputy Director
Chief, Environmental Technical and Regulatory Division
Chief Evironmental Scientist

OFFICE OF MANAGEMENT SYSTEMS

Director
Deputy Director
Chief, Data Systems Division
Chief, Information and Statistics Division

OFFICE OF BUDGET

Director
Deputy Director

OFFICE OF SYSTEMS ENGINEERING MANAGEMENT

Director
Deputy Director
Chief, Advanced Concepts Staff
Chief, Systems Enginering Division
Chief, Technical Programs Division

AIR TRAFFIC SERVICE

Director
Deputy Director
Chief, ATC System Programs Division
Chief, Flight Services Division
Chief, Airspace and Air Traffic Rules Division
Chief, Automation Division
Chief, Airspace Obstruction and Airports Branch

AIRPORTS SERVICE

Director
Deputy Director
Chief and Assistant Chief, Development Programs Division

Chief and Assistant Chief, Airports Planning Division
Chief, Environmental Planning Branch
Chief, Planning Grant Branch
Airport Planning Specialists, GS-13/14
Civil Engineers, GS-13/14
Community Planners, GS-13/14
Chief, National System Planning Branch
Chief, Program Establishment Branch
Chief, Program Requirements Branch
Chief, Compliance and Property Conveyance Branch
Airport Programs Specialist, GS-13/14

AIRWAY FACILITIES SERVICE

Director
Deputy Director
Executive Officer
Technical Assistant to the Director
Division/Staff Chiefs and Assistant Division Chiefs
Supervisory Engineer
Program Analysis Officer ⊖
Technical Officer
Technical Officer Representative

CIVIL AVIATION SECURITY SERVICE

Director
Deputy Director
Executive Officer
Chief, Technical Security Division
Chief, Ground Operations Security Division
Chief, Air Operations Security Division
Chief, Operations Liaison Staff
Chief, Foreign Air Carrier Security Division

FLIGHT STANDARDS SERVICE

Director
Deputy Director
Chief, Engineering and Manufacturing Division
Chief, Air Carrier Division
Chief, General Aviation Division

LOGISTICS SERVICE

Director
Deputy Director
Chief and Assistant Chief, Contracts Division
Procurement Officer, GS-13 and above
Contract Price Analyst, GS-13 and above
Contract Specialist, GS-13 and above
Supervisory Contract Specialist
Supervisory Property Administration Specialist
Property Administration Specialist, GS-13 and above
Transportation Specialist, GS-13 and above
Industry Liaison Officer
Chief and Assistant Chief, Policy and Plans Division
General Supply Officer, GS-13 and above (Plans Branch)
Chairman, Contract Review Board
Chairman, Sole Source Board
Minority Small Business Coordinator
Chief and Assistant Chief, Material Management Division
Chief, Personal Property Management Branch
Program Analyst (Communications), GS-14
Communications Management Specialist, GS-13
Space, Property and Communications Officer, GS-13
Chief, Real Property and Space Management Branch
General Supply Specialist (Furniture Standards)
Chief and Assistant Chief, Industrial Division
Industrial Engineer, GS-14 and above
Industrial Specialist, GS-13 and above
Chief, Plans Branch
Procurement Analyst (Plans Branch)

SYSTEMS RESEARCH AND DEVELOPMENT SERVICE

Director
Deputy Director
Division Chiefs and Assistant Division Chiefs
Technical Advisor, ATC Systems Division
Chief, Program Management Staff
Assistant Chief, Program Management Staff
Chief, Special Program Staff, Aircraft Safety & Noise Abatement Division
Chief, Spectrum Analysis Branch, Analysis Division

METROPOLITAN WASHINGTON AIRPORTS

Director
Deputy Director
Airport Managers
Headquarters Staff Chiefs
Special Assistants
General Attorney
Chief, Contract/Property Management Branch (GS-12)
Chiefs, Operations and Safety Divisions
Chiefs and Assistant Chiefs, Engineering and Maintenance Division
Chiefs, Engineering Branches
Chief, Revenue Contract Branch (GS-12)
Chiefs and Assistant Chiefs, Financial Management Divisions
Chiefs, Property Management Branches (GS-12)
Contract Specialists and Negotiators, GS-13 and above
Operations and Safety Officers
Engineers and Architects, GS-13 and above
Chiefs, Budget and Administrative Branches
Chiefs, Financial Administration Branches

OFFICE OF PERSONNEL AND TRAINING

Director
Deputy Director

OFFICE OF LABOR RELATIONS

Director
Deputy Director

OFFICE OF ACCOUNTING AND AUDIT

Director
Deputy Director
Technical Assistant to the Director
Division Chiefs and Assistant Division Chefs
Supervisory Auditors

NATIONAL AVIATION FACILITIES EXPERIMENTAL CENTER

Director
Deputy Director
Executive Officer
Chief, Engineering Management Staff
Center Counsel
Chief, Logistics Division
Chief, Contracts and Purchase Branch
Chief, Materiel branch
Chief, Audit Division
Chief, Air Traffic Systems Division
Chief, Systems Test Branch
Chief, Surveillance Systems Branch
Chief, Laboratory Management Branch
Chief, Systems and Engineering Equipment Branch
Chief, Simulation and Analysis Division
Chief, Analysis Branch
Chief, Systems Development Branch Electronics Engineer, GS-14
Chief, System Engineering Section
ATC Specialist R&D, GS-14
Chief, Communications and Guidance Division
Chief, Landing Branch
Chief, Communications and Navigation Branch
Chief, Aircraft and Airports Safety Division
Chief, Structures Branch
Chief, Propulsion and Fire Protection Branch
Chief, Instruments and Flight Test Branch
Chief, Airports Branch
Chief, Supporting Services Division
Chief, Aviation Facilities Division
Chief, Flight Operations Branch
Chief, investigations and Security Division

AERONAUTICAL CENTER

Director
Deputy Director
Executive Officer
Aeronautical Center Counsel
Chief, Operations Staff
Chief, Civil Rights Staff
Chief, Personnel Management Division
Chief, Accounting Division
Chief, Budget Division
Chief, Administrative Services Division
Chief, Plant Engineering Division
Chief, Procurement Division
Chief, Contracting Branch
Chief, Contract Management Branch
Chief, Procurement and Systems Branch
Chief, Electrical, Electronics and Realty Contracting Section
Chief, Aviation, Medical and Training Contracting Section
Chief, Electrical and Electronics Management Section
Chief, Aviation, Medical and Training Management Section
Chief, Audit Division
Chief, Investigations and Security Division
Chief, Civil Aeromedical Institute
Chief, Flight Standards Technical Division
Chief, Data Services Division
Chief, FAA Depot
Superintendent, FAA Management Training School
Chief, Aircraft Services Base
Superintendent, FAA Academy
Chief, Airways Engineering Support Division

REGIONS

Regional Director (Includes Assistant Administrators and Deputy Assistant Administrators for Europe, Africa and Middle East Regions)
Deputy Regional Director
Executive Officer
Area Managers, San Juan and Balboa
Resident Directors, Guam and Samoa
Supervisory Auditor
Procurement Officer/Specialist, GS-13 and above
Supply Management Officer/Specialist, GS-13 and above
Chief, Civil Rights Staff
Realty Supply Officer/Specialist, GS-13 and above
Realty Officer
Regional Counsel
Medical Officer
Chief, Accounting Division
Chief and Assistant Chief of an Air Traffic, Flight Standards, Airports, Airway Facilities Division
Chief, Air Transportation Security Division
Chief, Air Security Branch
Chief, Air Transportation Security Field Office
Principal Security Inspector (some GS-12's)
Chief and Assistant Chief, Logistics Division
Supervisory Contract Specialist
Chief and Assistant Chief of a General Aviation District Office, Air Carrier District Office, Flight Standards District Office, and Airports District Office
Principal Inspector, except at a Flight Inspection National Field Office, with a title such as Air Carrier Inspector, General Aviation Inspector, Air Carrier Operations Inspector, Aviation Operations Inspector, Aviation Safety Officer/Inspector, Airborne Instrument Specialist, Aviation Maintenance Specialist, Aviation Electronic Specialist

Aviation Safety Inspector/Specialist (Manufacturing), GS-13 and above
Aerospace Engineer, GS-13 and above
Flight Test Pilot/Specialist, GS-13 and above

JUSTIFICATION FOR INCLUSION OF POSITIONS IN APPENDIX C OCCUPIED BY INCUMBENTS BELOW GS-13

CHIEF, CONTRACT/PROPERTY MANAGEMENT BRANCH

(Supervisory Contract Administrator, WA-3456, GS-1102-12)

The incumbent of this position supervises the Contract Management Branch and is responsible for the administration of air carrier, tenant, and concessionaire contracts at Washington National Airport. He also oversees collection, disbursement, safeguarding, and preliminary accountability of various funds collected or disbursed through Government operations at Washington National Airport.

CHIEF, REVENUE CONTRACT BRANCH

(Supervisory Contract Specialist, WA-3319, GS-1102-12)

The incumbent of this position supervises the Revenue Contract Branch and is responsible for the administration of air carrier, tenant, and concessionaire contracts at Dulles International Airport. He also oversees collection, disbursement, safeguarding, and preliminary accountability of various funds collected or disbursed through Government operations at Dulles.

CHIEFS, PROPERTY MANAGEMENT BRANCHES

(General Supply Officer, WA-1291, GS-2001-12, Washington National Airport)

(General Supply Officer, WA-1291, GS-2001-12, Dulles International Airport)

The incumbents of these positions supervise the Property Management Branches of National and Dulles Airports. They are responsible for the procurement of equipment, supplies, materials, and services for the Airports. They are also responsible for the physical accountability of real as well as personal property at the Airports.

PRINCIPAL SECURITY INSPECTOR

(Security Specialist, NW-5250, GS-080-12)

The incumbent of this position serves as Principal Security Agent assigned to select air carriers and represent FAA on all aviation security matters involving these carriers. In this capacity, he plays a major role in approving the security programs of the carriers.

III. ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Assistant Administrator/Resident Manager
Assistant Administrator for Development
General Counsel
Comptroller
Director, Office of Procurement & Supply (GS-13)
Director, Office of Comprehensive Planning (GS-14)

IV. URBAN MASS TRANSPORTATION ADMINISTRATION

Special Assistant to the Administrator
Special Assistant to Deputy Administrator, Associate Administrator for Administration
Contract Price Analyst
Procurement Analyst
Financial Manager
Supervisory Auditor
Contract Specialist GS-13 and above
Auditor, GS-13/14
Management Analyst GS-13 and above
Accountants GS-13 and above
Budget/Analyst GS-13 and above
Director, Office of Administrative Services
Director, Office of Procurement and Third Party Contract Review
Chief Counsel
Assistant Chief Counsel
Attorney Advisor GS-13 and above
Director of Civil Rights
Equal Oportunity Specialist GS-13 and above
Associate Administrator for Policy and Program Development
Director, Office of Program Development
Director, Office of Program Evaluation
Director, Office of Policy Research
Associate Administator for Transit Assistance
Director, Office of Grants Assistance
Director, Office of Program Support
Director, Office of Program Analysis
Urban Mass Transportation Representative, GS-13 and above
General Engineers GS-13 and above
Mechanical Engineers GS-13 and above
Relocation Specialist GS-13 and above
Transit Operations Specialist GS-13
Program Analyst GS-13 and above
Associate Administrator for Research and Development
Director, Office of Bus and Paratransit Technology
Director, Office of Rail Technology
Director, Office of Safety and Product Qualification
Director, Office of New Systems and Automation
Electrical Engineer GS-13 and above
Electronic Engineer GS-13 and above
Safety Engineer GS-14 and above

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Operations Research Analyst GS-13 and above
Director AGT Applications Division
Director UMTA Programs—High Speed Ground Test Center—Pueblo, Colorado
Associate Administrator for Transportation Management and Demonstrations
Transit Industry Liaison GS-15
Director, Office of Transit Management
Director, Office of Services Methods Demonstrations
Transportation Project Manager GS-13 and above
Community Planners GS-13 and above
Regional Directors and Chiefs

V. FEDERAL HIGHWAY ADMINISTRATION

Executive Director

OFFICE OF THE CHIEF COUNSEL

Chief Counsel
Deputy Chief Counsel
Assistant Chief Counsel

OFFICE OF PROGRAM REVIEW AND INVESTIGATIONS

Director

OFFICE OF CIVIL RIGHTS

Director
Chief, Contract Compliance Division
Civil Rights Specialist, GS-13/14, engaged in Contract Compliance Review

NATIONAL HIGHWAY INSTITUTE

Director
State Programs Officer
Assistant State Programs Officer
Federal Programs Officer
Assistant Federal Programs Officer
University and Industry Programs Officer
Assistant University and Industry Programs Officer

ASSOCIATE ADMINISTRATION FOR PLANNING

Associate Administrator
Director, Office of Program and Policy Planning
Chief, Transportation Economics Division
Chief, Policy Planning Division
Chief, Program Coordination Division
Director, Office of Highway Planning
Chief, Program Management Division
Chief, Urban Planning Division

ASSOCIATE ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT

Associate Administrator
Program Coordinator
Director, Office of Research
Director, Office of Development
Chief, Program Analysis Staff
Chief, Structures & Applied Mechanics Division
Deputy Chief, Structures & Applied Mechanics Division
Chief, Bridge Structures Group
Chief, Protective Systems Group
Chief, Pavement Systems Group
Chief, Materials Division
Deputy Chief, Materials Division
Chief, Soils & Exploratory Techniques Group
Chief, Paving and Structure Materials Group
Chief, Chemistry & Coatings Group
Chief, Traffic Systems Division
Deputy Chief, Traffic Systems Division
Chief, Analysis and Experimentation Group
Chief, Systems Development & Technology Group
Chief, Systems Requirements & Evaluation Group
Chief, Environmental Design and Control Division
Deputy Chief, Environmental Design & Control Division
Chief, Socio-Economic & Environment Group
Chief, Environmental Control Group
Chief, Engineering Services Division
Chief, Electronic Instrumentation Group
Chief, Computer Technology Group
Chief, Mechanical Design & Experimentation Fabrication Group
Chief, Implementation Division
Deputy Chief, Implementation Division
Chief, Engineering Location & Design Group
Chief, Construction, Materials and Methods Group

ASSOCIATE ADMINISTRATOR FOR RIGHT-OF-WAY AND ENVIRONMENT

Associate Administrator
Director, Office of Environmental Policy
Chief, Environmental Programs Division
Chief, Environmental Quality Division
Director, Office of Right-of-Way
Chief, Real Property Acquisition Division
Chief, Relocation Assistance Division

ASSOCIATE ADMINISTRATOR FOR ENGINEERING AND TRAFFIC OPERATIONS

Associate Administrator
Director, Office of Highway Operations
Chief, Federal Highway Projects Division
Chief, Foreign Projects Division
Chief, Construction and Maintenance Division
Highway Engineer, GS-15, Construction and Maintenance Division
Chief, Defense Plans and Operations Division
Director, Office of Traffic Operations
Chief, Traffic Performance and Analysis Division
Director, Office of Engineering
Chief, Federal-Aid Division

Chief, Highway Design Division
Chief, Bridge Division
Highway Engineer, GS–15, Divisions in Office of Engineering

ASSOCIATE ADMINISTRATOR FOR MOTOR CARRIERS AND HIGHWAY SAFETY

Associate Administrator
Director, Office of Highway Safety
Chief, Program Management Division
Chief, Technical Development and Standards Division
Director, Bureau of Motor Carrier Safety
Deputy Director, Bureau of Motor Carrier Safety
Chief, Regulations Division
Chief, Compliance Division
Deputy Chief, Compliance Division
Chief, Accident Analysis Division

ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

Associate Administrator
Deputy Associate Administrator
Chief, Operations and Services Division
Director, Office of Contracts and Procurement
Chief, Procurement Management Support Division
Chief, Services Procurement Division
Chief, Contract Administration Division
Senior Procurement Analyst
Supervisory Contract and Procurement Specialist, GS–13/14

FIELD INSTALLATIONS

Regional Federal Highway Administrator or Regional Engineer
Deputy Regional Federal Highway Administrator
Director, Office of Federal Highway Projects
Deputy Director, Office of Federal Highway Projects
Chief, Construction Division or Director, Office of Construction and Maintenance
Regional Civil Rights Officer, GS–14
Civil Rights Specialist, GS–13
Regional Audit Manager
Auditor-in-Charge or Assistant Regional Audit Manager for (State)
Division Administrator
Director, Motor Carrier Safety Office
Regional Hazardous Materials Officer
Regional Accident Investigator
Motor Carrier Safety Investigator

VI. Federal Railroad Administration

OFFICE OF THE ADMINISTRATOR

Deputy Administrator
Special Assistant to the Administrator, GS–13 and above
Director, Special Projects Staff
Executive Director, Minority Business Resource Center
Civil Rights Officer
Public Affairs Officer

OFFICE OF PLANNING AND BUDGET DEVELOPMENT

Director
Chief, Budget Development Division
Chief, Planning Division
Chief, Program Review Division

OFFICE OF ADMINISTRATION

Associate Administrator
Director, Office of Procurement
Supervisory Contract Specialist, GS–14 and above
Contract Specialist, GS–13
Director, Office of Management Systems
Director, Office of Financial and Administrative Services
Director, Office of Personnel and Training
Auditor

OFFICE OF CHIEF COUNSEL

Chief Counsel
Deputy Chief Counsel
Assistant Chief Counsel, Safety Regulation Division
Assistant Chief Counsel, Enforcement Division
Assistant Chief Counsel, General Law Division
Assistant Chief Counsel, Freight Economics and Finance Division
Assistant Chief Counsel, Intercity Passenger Programs Division

OFFICE OF FEDERAL ASSISTANCE

Associate Administrator
Financial Analyst GS–15
Director, Office of National Freight Assistance Programs
Director, Office of State Assistance Programs
Chief, State Planning Assistance Division
Chief, Financial Analysis and Administration Division
Chief, State Programs Division
Chief, Special Programs Division
Chief, Rail Passenger Programs Division

NORTHEAST CORRIDOR PROJECT

Director
Deputy Director
Associate Directors
Chief, Operations Staff
Chief, Project Control Division
Chief, Planning and Analysis Division
Chief, Design Division
Chief, Construction Division
Chief, Systems Engineering Division
Program Manager, Philadelphia

OFFICE OF RESEARCH AND DEVELOPMENT

Associate Administrator
Director, Office of Freight Systems

Director, Office of Passenger Systems
Director, Office of Rail Safety Research

OFFICE OF POLICY AND PROGRAM DEVELOPMENT

Associate Administrator
Deputy Associate Administrator
Director, Office of Capital Policy and Planning
Director, Office of Systems Analysis and Information
Director, Office of Economics and Operations Policy

OFFICE OF SAFETY

Associate Administrator
Deputy Associate Administrator
Director, Office of Safety Programs
Director, Office of Standards Procedures

REGIONAL OFFICES

Regional Administrators
Directors of Railroad Safety
Directors of Federal Assistance
Supervisory Railroad Safety Inspectors
Railroad Safety Inspection Specialists
Railroad Safety Inspectors, GS-11/12

TRANSPORTATION TEST CENTER

Director
Chief, Facility Management Division
Contract Specialist

ALASKA RAILROAD

General Manager
Assistant General Manager
Chief, Administration Division
Real Estate Officer
Chief, Contracts and Procurement
Chief Counsel
Traffic Officer
Operations Officer
Assistant Operations Officer—(Northern Region)
Chief Engineer
Assistant Chief Engineer
Chief Mechanical Officer
General Mechanical Foreman—(Fairbanks)
Transportation Officer
Chief, Budget and Accounting
Supply Officer
Chief, Data Processing
General Attorney
Freight Agent, Anchorage

VII. National Highway Traffic Safety Administration

OFFICE OF THE ADMINISTRATOR

Director, Office of Civil Rights
Equal Opportunity Specialist, GS-13 and above, engaged in Contract Administration
Chief Counsel
Attorney-Advisor, all grade levels

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR MOTOR VEHICLE PROGRAMS

Associate Administrator
Director, Engineering Test Facility
Chief, Project Engineering Division
Chief, Testing Operations Division
Director, Engineering Systems Staff Cost and Lead-Time Engineer and Cost and Lead-Time Analyst
Director, Office of Standards Enforcement
Chief, Validation Division
Chief, Verification Division
All other Office of Standards Enforcement professional personnel, regardless of grade level
Director, Office of Crash Avoidance
Chief, Driver Environment Division
Chief, Handling and Stability Division
Chief, Tire Division
All other Office of Crash Avoidance professional personnel, GS-13 and above
Director, Office of Crashworthiness
Chief, Standards Engineering Division
Chief, Standards Preparation Division
Chief, Automobile Ratings Division
All other Office of Crashworthiness professional personnel, GS-13 and above
Director, Office of Defects Investigation
All other Office of Defects Investigation professional personnel
Any other employees, regardless of grade, designated in MVP to serve as Contract Technical Managers and supervisors of such employees

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR TRAFIC SAFETY PROGRAMS

Associate Administrator
Director, Office of Driver and Pedestrian Programs
Chief, Program and Demonstration Management Division
Chief, Demonstrations Branch
Chief, Program Definition Branch
Chief, Demonstration Evaluation Division
Chief, Enforcement and Emergency Services Division
Chief, Emergency Medical Services branch
Chief, Police Traffic Services Branch
Chief, Driver and Pedestrian Education Division
Chief, Driver Programs Branch
Chief, Pedestrian and Cyclist Branch
Chief, Safety Belt Usage Branch
Chief, Driver Licensing and Adjudication Division
Chief, Licensing and Regulations Branch
Chief, Adjudication Branch
Chief, Driver Register Branch
Director, Office of State Program Assistance
Chief, Program Management Division
Chief, Manpower Development Division

Chief, Program Review and Analysis Division
Chief, Information and Records Systems Division
Director, Office of State Vehicle Programs
Chief, Engineering and Demonstrations Division
Chief, Vehicles-in-Use Standards Branch
Chief, State Program Division
All other Office of State Vehicle Programs professional personnel, GS–13 and above
Any other employees, regardless of grade designated in TSP to serve as Contract technical Managers and supervisors of such employees

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT

Associate Administrator
Director, Office of Vehicle Safety Research
Chief, Crash Avoidance Reserch Division
Chief, Structures Research Division
Director, Safety Research Laboratory
Chief, Braking Systems Division
Chief, Occupant Restraint Systems Division
Chief, Tire Systems Division
Director, Office of Statistics and Analysis,
Chief, Mathematical Analysis Division,
Chief, Accident Investigation Division,
Chief, Statistical Programs Division
Director, Office of Driver and Pedestrian Research
Any other employees, regardless of grade, designated in R&D to serve as Contract Technical Managers, and supervisors of such employees

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR PLANNING AND EVALUATION

Associate Administrator
Director, Office of Program Planning
Director, Office of Program Evaluation
Any other employees, regardless of grade, designatd in P&E to serve as Contract Technical Managers, and supervisors of such employees

OFFICE OF THE ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION

Associate Administrator
Director, Office of Contracts and Procurement
Contract Specialist, GS–13, 14
Director, Office of Financial Management
Director, Office of Management Services,
Chief, Technical Services Division, Chief,
General Services Division
Any other employees, regardless of grade, designated in ADMIN to serve as Contract Technical Managers, and supervisors of such employees
Any other employees regardless of grade that designates the contractor to perform graphics or other art work

REGIONAL OFFICES

Regional Administrators
Any other NHTSA employees, regardless of grade, designated to serve as a Contract Technical Manager, and supervisors of such employees

VIII. UNITED STATES COAST GUARD

Commandant
Vice Commandant
Chief of Staff
Deputy Chief of Staff
Comptroller
Deputy Comptroller
Chief, Procurement Division
Chief, Administrative and Review Branch
Chief, Quality Assurance Division
Supervisory Contract Specialist, GS–13 and above
Contract Specialist, GS–13 and above
Chief, Office of Operations
Deputy Chief Office of Engineering
Chief Counsel
Deputy Chief Counsel
Chief, Claims and Litigation Division, Office of Chief Counsel
Chief, Procurement Law Division, Office of Chief Counsel
Chief, Office of Merchant Marine Safety
Deputy Chief, Office of Merchant Marine Safety
Chief, Merchant Vessel Documentation Division
Chief, Merchant Marine Technical Division
Chief, Merchant Vessel Inspection Division
Assistant Chief, Merchant Vessel Inspection division
Chief, Merchant Vessel Personnel Division
Traveling Inspector, Office of Merchant Marine Safety
Chief, Cargo & Hazardous Materials Division
Assistant Chief, Cargo & Hazardous Materials Division
Chief, Office of Research and Development
Deputy Chief, Office of Research and Development
Chief Scientist

Chief, Office of Boating Safety
Deputy Chief, Office of Boating Safety
Chief, Boating Technical Division
Chief, State Liaison and Compliance Division, Office of Boating Safety
Commander, US Coast Guard Districts
Officer in Charge, Marine Inspection Office
Captain of the Port
Director, Great Lakes Pilotage Staff
Chief, Office of Civil Rights
Deputy Chief, Office of Civil Rights
Equal Opportunity Specialist (Employment), GS–13, Office of Civil Rights
Civil Rights Specialist, GS–13 and above, engaged in Contract Compliance Review

Chief, Office of Marine Environment and Systems
Deputy Chief, Office of Marine Environment and Systems
Chief, Bridge Division
Assistant Chief, Bridge Division
Project Manager, Deepwater Ports Project
Assistant Project Manager, Deepwater Ports Project
Chief, Marine Environmental Protection Division
Assistant Chief Marine Environmental Protection Division
Chief, Port Safety & Law Enforcement Division
Assistant Chief, Port Safety & Law Enforcement Division
District Chiefs of Staff
District Chiefs, Boating Safety Division
District Chiefs, Engineering Division
District Chiefs, Naval Engineering Branch
District Comptrollers
District Chiefs, Marine Safety Branch
Commanding Officer, Marine Safety Office

IX. Research and Special Programs Administration

Administrator
Deputy Administrator
Executive Officer
Executive Secretary
Special Assistant

Office of the Chief Counsel

Chief Counsel

Office of Policy, Plans, and Administration

Director
Chief, Administration Division
Chief, Resources Management Division
Chief, Policy and Plans Division
Chief, Procurement Branch
Contract Specialist, GS–13 and above

Transportation Systems Center

Director
Deputy Director
Executive Assistant
Equal Opportunity Officer
Chief Counsel
Patent Advisor
Chief, Office of Plans and Programs
Chief, Office of Advanced Systems
Director, Office of Systems Research and Analysis
Chief, National Transportation Research Division
Chief, Transportation Information Division
Chief, Urban and Regional Research Division
Director, Office of Energy and Environment
Chief, Energy Programs Division
Chief, Environmental and Test Programs Divison
Director, Office of Air and Marine Systems
Chief, Systems Development Division
Chief, Systems Technology Division
Director, Office of Ground Systems
Deputy Director, Office of Ground Systems
Chief, Urban Systems Division
Chief, Intercity Systems Division
Chief, Vehicles and Engineering Division
Director, Office of Administration
Chief, Budget Office
Chief, Management Systems Division
Chief, Procurement and Supply Division
Chief, Procurement Analysis Branch
Chief, Contracts Branch
Chief, Purchases Branch
Contract Specialist, GS–13 and above
Contract Price Analyst, GS–13 and above
Chief, Computer Services Division

Transportation Programs Bureau

Director
Director, Office of Transportation Security
Deputy Director, Office of Transportation Security
Director, Office of Systems Engineering
Chief, Navigation and Communications Division
Chief, Advanced Technology Division
Director, Office of Emergency Transportation
Deputy Director, Office of Emergency Transportation
Director, Office of Facilitation
Deputy Director, Office of Facilitation
Director, Office of University Research
Deputy Director, Office of University Research
Director, Transportation Safety Institute

Materials Transportation Bureau

Director
Associate Director for Operations and Enforcement
Chief, Operations Division
Chief, Hazardous Materials Enforcement Division
Chief, Pipeline Safety Enforcement Division
Chief, MTB Eastern Region Office
Chief, MTB Southern Region Office
Chief, MTB Central Region Office
Chief, MTB Southwest Region Office
Chief, MTB Western Region Office
Associate Director for Hazardous Materials Regulation
Chief, Standards Division
Chief, Technical Division
Associate Director for Pipeline Safety Regulation
Chief, Standards Division
Chief, Technical Division
Assistant Director for Program Support
Chief, Program Development Division
Chief, R&D Management Division
Chief, Information Services Division
Associate Director for Alaska Pipeline
Chief, Specification Control Division
Chief, Engineering Design Review Division

[Amdt. No. 99-10, 42 FR 3119, Jan 14, 1977, 42 FR 5359, Jan 28, 1977, as amended by 42 FR 8144, Feb. 9, 1977; Amdt. 99-11, 42 FR 24280, May 13, 1977; Amdt. 99-12, 42 FR 39220, Aug. 3, 1977; Amdt.99-13, 43 FR 54251, Nov. 21, 1978; 44 FR 9755, Feb. 15, 1979]

Appendix D—Extract From Appendix C of Civil Service Federal Personnel Manual System on Special Government Employees (Including Guidelines for Obtaining and Utilizing the Services of Special Government Employees)

Each department and agency should observe the following rules in obtaining and utilizing the services of a consultant, adviser, or other temporary or intermittent employee:

(a) At the time of his original appointment and the time of each appointment thereafter, the department or agency should make its best estimate of the number of days during the following 365 days on which it will require the services of the appointee. A part of a day should be counted as a full day for the purposes of this estimate, and a Saturday, Sunday, or holiday on which duty is to be performed should be counted equally with a regular work day.

(b) Unless otherwise provided by law, an appointment should not extend for more than 365 days. When an appointment extends beyond that period, an estimate as required by paragraph (a) should be made at the inception of the appointment and a new estimate at the expiration of each 365 days thereafter.

(c) If a department or agency estimates, pursuant to paragraph (a) or (b), that an appointee will serve more than 130 days during the ensuing 365 days, the appointee should not be carried on the rolls as a special Government employee and the department or agency should instruct him that he is regarded as subject to the prohibitions of 18 U.S.C. 203 and 205 to the same extent as if he were to serve as a full-time employee. If the estimate is that he will serve no more than 130 days during the following 365 days, he should be carried on the rolls of the department or agency as a special Government employee and instructed that he is regarded as subject only to the restrictions of 18 U.S.C. 203 and 205. Even if it becomes apparent, prior to the end of a period of 365 days for which a department or agency has made an estimate on an appointee, that he has not been accurately classified, he should nevertheless continue to be considered a special Government employee or not, as the case may be, for the remainder of that 365-day period.

(d) An employee who undertakes service with two departments or agencies shall inform each of his arrangements with the other. If both his appointments are made on the same date, the aggregate of the estimates made by the departments or agencies under paragraph (a) or (b) shall be considered determinative of his classification by each. Notwithstanding anything to the contrary in paragraphs (a), (b), or (c), if after being employed by one department or agency, a special Government employee is appointed by a second to serve it in the same capacity, each department or agency should make an estimate of the amount of his service to it for the remaining portion of the 365-day period covered by the original estimate of the first. The sum of the two estimates and of the actual number of days of his service to the first department or agency during the prior portion of such 365-day period shall be considered determinative of the classification of the appointee by each during the remaining portion. If an employee undertakes to serve more than two departments or agencies, they shall classify him in a manner similar to that prescribed in this paragraph for two agencies. Each agency which employs special Government employees who serve other agencies shall designate an officer to coordinate the classification of such employees with such other agencies.

(e) When a person is serving as a member of an advisory committee, board or other group, and is by virtue of his membership thereon an officer or employee of the United States, the requirements of paragraphs (a), (b), (c), and (d) should be carried out to the same extent as if he were serving the sponsoring department or agency separately and individually.

(f) The 60-day standard affecting a special Government employee's private activities before his department or agency is a standard of actual past service, as contrasted with the 130-day standard of estimated future service discussed above. A special Government employee is barred from representing another person before his department or agency at times when he has served it for an aggregate of more than 60 days during the past 365 days. Thus, although once having been in effect, the statutory bar may be lifted later by reason of an intervening period of nonservice. In other words, as a matter of law the bar may fluctuate in its effect during the course of a special Government employee's relationship with his department or agency.

(g) A part of a day should be counted as a full day in connection with the 60-day standard discussed in paragraph (f), above, and a Saturday, Sunday, or holiday on which duty has been performed should be counted equally with a regular work day.

Service performed by a special Government employee in one department or agency should not be counted by another in connection with the 60-day standard.

To a considerable extent the prohibitions of 18 U.S.C. 203 and 205 are aimed at the sale of influence to gain special favors for private businesses and other organizations and at the misuse of governmental position or information. In accordance with these aims, it is desirable that a consultant or adviser or other individual who is a special Government employee, even when not compelled to do so by 18 U.S.C. 203 and 205, should make every effort in his private work to avoid any personal contact in negotiations for contracts or grants with the department or agency which he is serving if the subject matter is related to the subject matter of his consultancy or other service. It is recognized that this will not always be possible to achieve; for example, in a situation in which a consultant or adviser has an executive position and responsibility with his regular employer which requires him to participate personally in contract negotiations with the department or agency he is advising. When this situation occurs, the consultant or adviser should participate in the negotiations for his employer only with the knowledge of a responsible Government official. In other instances an occasional consultant or adviser may have technical knowledge which is indispensable to his regular employer in his efforts to formulate a research and development contract or a research grant and, for the same reason, it is in the interest of the Government that he should take part in negotiations for his private employer. Again, he should participate only with the knowledge of a responsible Government official.

Section 205 of title 18 contains an exemptive provision dealing with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from his performance of work under a grant or contract for which he otherwise would be disqualified because he had participated in the matter for the Government or it is pending in an agency he has served for more than 60 days in the past year. More particularly, the provision gives the head of a department or agency the power, notwithstanding any prohibition in either 18 U.S.C. 203 or 205, to allow a special Government employee to represent before such department or agency either his regular employer or another person or organization in the performance of work under a grant or contract. As a basis for this action, the department or agency head must first make a certification in writing, published in the FEDERAL REGISTER, that it is required by the national interest.

It is necessary occasionally to distinguish between consultants and advisers who are special Government employees and persons who are invited to appear at a department or agency in a representative capacity to speak for firms or an industry, or for labor or agriculture, or for any other recognizable group of persons, including, on occasion, the public at large. A consultant or adviser whose advice is obtained by a department or agency from time to time because of his individual qualifications and who serves in an independent capacity is an officer or employee of the Government. On the other hand, one who is requested to appear before a Government department or agency to present the views of a nongovernmental organization or group which he represents, or for which he is in a position to speak, does not act as a servant of the Government and is not its officer or employee. He is therefore not subject to the conflict of interest laws and is not within the scope of this chapter.

The following principles are useful in arriving at a determination whether an individual is acting before an agency in a representative capacity:

(1) A person who receives compensation from the Government for his services as an adviser or consultant is its employee and not a representative of an outside group. The Government's payment of travel expenses and a per diem allowance, however, does not by itself make the recipient an employee.

(2) It is rare that a consultant or adviser who serves alone is acting in a representative capacity. Those who have representative roles are for the most part persons serving as members of an advisory committee or similar body utilized by a Government agency. It does not follow, however, that the members of every such body are acting as representatives and are therefore outside the range of the conflict of interest laws. This result is limited to the members of committees utilized to obtain the views of nongovernmental groups or organizations.

(3) The fact that an individual is appointed by an agency to an advisory committee upon the recommendation of an outside group or organization tends to support the conclusion that he has a representative function.

(4) Although members of a governmental advisory body who are expected to bind outside organizations are no doubt serving in a representative capacity, the absence of authority to bind outside groups does not require the conclusion that the members are Government employees. What is important is whether they function as spokesmen for nongovernmental groups or organizations

and not whether they can formally commit them.

(5) When an adviser or consultant is in a position to act as a spokesman for the United States or a Government agency—as, for example, in an international conference—he is obviously acting as an officer or employee of the Government.

While it would be highly desirable, in order to minimize the occurrence of conflicts of interests, for departments and agencies of the Government to avoid appointing to advisory positions individuals who are employed or consulted by contractors or others having a substantial amount of business with that department or agency, it is recognized that the Government has, of necessity, become increasingly concerned with highly technical areas of specialization and that the number of individuals expert in those areas is frequently very small. Therefore, in many instances it will not be possible for a department or agency to obtain the services of a competent adviser or consultant who is not in fact employed or consulted by such contractors. In addition, an advisory group may of necessity be composed largely or wholly of persons of a common class or group whose employers may benefit from the advice given. An example would be a group of university scientists advising on research grants to universities. Only in such a group can the necessary expertise be found. In all these circumstances, particular care should be exercised to exclude his employer's or clients' contracts or other transactions with the Government from the range of the consultant's or adviser's duties.

Appendix E—Statutes Regulating Post-Employment Responsibilities of Government and Special Government Employees

§ 207 *Disqualification of former officers and employees in matters connected with former duties or offical responsibilities; disqualification of partners.*

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by the former officer or employee.

(c) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

Shall be fined not more than $5,000, or imprisoned not more than one year, or both.

A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Government employee shall

as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section. (Added Pub. L. 87-349, section 1(a), Oct. 23, 1962, 76 Stat. 1123.)

§ 203 *Acts affecting a personal financial interest.*

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. (Added Pub. L. 87-849, section 1(a), Oct. 23, 1962, 76 Stat. 1124.)

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the "transaction of business with * * * [a] business entity" to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interest.

APPENDIX TO SUBTITLE A—UNITED STATES RAILWAY ASSOCIATION—EMPLOYEE RESPONSIBILITIES AND CONDUCT

SUBPART A—GENERAL

Sec.
1 Purpose and policy.
3 Definitions.
5 Applicability.

SUBPART B—ETHICAL AND OTHER CONDUCT AND RESPONSIBILITIES OF EMPLOYEES

7 General.
9 Gifts, entertainment, and favors.
11 Outside employment and other activities.
13 Financial interests.
15 Conflicts of interest.
17 Disqualification arising from personal financial interests.
19 Use of Association property or official title.
21 Misuse of information.
23 Indebtedness.
25 Miscellaneous provisions.

SUBPART C—STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST

31 Employees required to submit statement.
33 Time and place for submission of employee statements.
35 Supplementary statements.

Sec.
37 Information not known by employee.
39 Information not required.
41 Confidentiality of employee's statement.
43 Interpretation and advisory service.

SUBPART D—DISQUALIFICATION OF FORMER EMPLOYEES IN MATTERS CONNECTED WITH FORMER DUTIES OR OFFICIAL RESPONSIBILITIES; DISQUALIFICATION OF PARTNERS

51 Matters in which employee participated personally and substantially.
53 Matters under employee's official responsibility.
55 Employee with outstanding scientific or technological qualifications.
57 Partner of employee.

APPENDIX 1—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTIONS 13(A), 15, AND 17(A).
APPENDIX 2—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS, UNDER SECTION 31.

SUBPART A—GENERAL

SECTION 1. *Purpose and policy.* (a) These regulations implement Pub. L. 93-236, The Regional Rail Reorganization Act of 1973. They prescribe standards of ethical and other conduct, and reporting requirements, for employees of the United States Railway Association (the Association). The standards and requirements are appropriate to the particular functions and activities of the Association.

(b) The absence of a specific published standard of conduct covering an act tending to discredit an employee of the Association does not mean that the act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

(c) Personnel of the Association shall observe standards of conduct that will reflect credit on the Association.

SEC. 3. *Definitions.* Unless the context requires otherwise, the following definitions apply in these regulations:

"Association" means the United States Railway Association established by P.L. 93-236.

"Chairman" means the Chairman of the Board of Directors of the Association.

"Employee" means an officer or employee of the Association.

"General Counsel" means the General Counsel of the Association, or his designee.

"Includes" means "includes but is not limited to."

"May" is used in a permissive sense to state authority or permission to do the act prescribed, and the words "a person may not * * *" mean that a person is not required, authorized, or permitted to do the act prescribed.

"Shall" is used in an imperative sense.

SEC. 5. *Applicability.* These regulations apply to each employee of the Association.

SUBPART B—ETHICAL AND OTHER CONDUCT AND RESPONSIBILITIES OF EMPLOYEES

SEC. 7. *General.* (a) Each employee shall avoid any action, whether or not specifically prohibited by these regulations, which might result in or create the appearance of—

(1) Using his Association office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding the efficiency or economy of the Association;

(4) Losing complete independence or impartiality;

(5) Making an Association decision outside of official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Association.

(b) An employee may not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or any conduct prejudicial to the integrity of the Association.

SEC. 9. *Gifts, entertainment, and favors.* (a) Except as provided in paragraphs (b) and (c) of this section, an employee may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, food, lodging, loan, or other thing of monetary value, from a person or employer of a person who—

(1) Has, or is seeking to obtain, contractual or other business or financial relationships with the Association.

(2) Has interests which may be substantially affected by the performance or nonperformance of that employee's official duties.

(b) Notwithstanding paragraph (a) of this section, an employee may—

(1) Accept a gift, gratuity, favor, entertainment, loan, or other thing of value when the circumstances make it clear that an obvious family relationship rather than the business of the persons concerned is the motivating factor;

(2) Accept food or refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour if the employee is properly in attendance;

(3) Accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, or other items of nominal intrinsic value; or

(4) Accept an invitation addressed to the Association, when approved by the General Counsel, to participate in an inaugural trip or similar ceremonial event related to trans-

portation, and accept food, lodging, and entertainment incident thereto.

(c) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself. However, this paragraph does not prohibit a voluntary gift of nominal value or a donation in a nominal amount made on a special occasion such as marriage, illness, retirement, or transfer.

SEC. 11. *Outside employment and other activities.* (a) An employee may not engage in any outside employment or other outside activity which is not compatible with the full and proper discharge of the duties and responsibilities of his employment with the Association. Incompatible activities include—

(1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest; and

(2) Outside employment which tends to impair his mental or physical capacity to perform his duties and responsibilities of his employment with the Association in an acceptable manner.

(b) An employee may not receive any salary or anything of monetary value from a private source as compensation for his services to the Association.

(c) This section does not preclude an employee from participating in the affairs of, or accepting an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, or fraternal organization, a nonprofit educational or recreational organization, or a public service or civic organization.

SEC. 13. *Financial interests.* (a) Except where authorized by statute or these regulations, an employee may not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Association duties and responsibilities. In any case in which such a question of financial interest arises the procedures set forth in section 17 apply.

(b) The fact that an employee is on leave of absence from employment with or has served as an attorney or consultant to, a railroad, or a company engaged in the manufacture, construction, or supply of railroad facilities and equipment, or a creditor of a railroad, shall not, of itself, be deemed to be a financial interest conflicting with his Association duties or responsibilities. This provision does not affect the obligation of such an employee to submit a statement of employment and financial interest as required by section 31(a)(1).

(c) The fact that an employee owns shares of stock, corporate bonds, or other corporate securities in any single railroad, or a company engaged in the manufacture, construction or supply of railroad facilities and equipment, or a creditor of a railroad, having a current aggregate market value of $10,000 or more, or an option to purchase such securities, shall not, in itself, be deemed to be a financial interest conflicting with his Association duties or responsibilities. Such ownership must, however, be reported in a special statement of financial interest, in a manner specified by the General Counsel, which shall be available for public inspection.

SEC. 15. *Conflicts of interest.* (a) Except where specifically exempted by statute or these regulations, a conflict of interest exists whenever the performance of the duties of an employee has or appears to have a direct and predictable effect upon a financial interest of such employee or of his spouse, minor child, partner, or person or organization with which he is associated or is negotiating for future employment.

(b) A conflict of interest exists even though there is no reason to suppose that the employee will, in fact, resolve the conflict to his own personal advantage rather than to that of the Association.

SEC. 17. *Disqualification arising from personal financial interests.* (a) Except as stated in paragraph (e) of this section, or except as permitted by statute, an employee may not participate personally and substantially as an employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim controversy, charge, accusation, or other particular matter in which, to his knowledge, he, his spouse, minor child, a blood relative who is a resident of the employee's household, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, unless he shall cause the financial interest involved to be divested, or request a determination of the propriety of his participation in any matter by informing the General Counsel of the nature and circumstances of the matter and financial interest involved.

(b) After examining the information submitted the General Counsel may—

(1) Relieve the employee from participation in the matter and, if possible, reassign it to another employee who is not subordinate to the relieved employee;

(2) Approve the employee's participation upon determining in writing that the interest involved is not so substantial as to be likely to affect the integrity of the services

the Association may expect from the employee;

(3) Recommend the reassignment of the employee; or

(4) If none of these alternatives is feasible, direct the employee to cause the financial interest to be divested so that it no longer comes within the scope of this section.

(c) In any case in which the General Counsel has reason to believe that an employee may have an interest that would be disqualifying under this section, he shall discuss the matter with the employee. If he finds that the interest exists, he may take any of the actions stated in paragraph (b) of this section.

(d) In any case in which the employee is dissatisfied with the General Counsel's decision, the employee may appeal the matter to the Chairman of the Association for reconsideration and final determination of the appropriate action.

(e) Information concerning categories of financial interests which are exempted from the prohibitions of §§ 13(a), 15, and paragraph (a) of this section as being too remote or too inconsequential to affect the integrity of an employee's interest in a matter, are set forth in Appendix 1.

SEC. 19. *Use of Association property or official title.* (a) An employee may not, directly or indirectly, use or allow the use of Association property of any kind, including property leased to the Association, for other than an officially approved activity. Each employee has a positive duty to protect and conserve Association property, including equipment, supplies, and other property entrusted or issued to him.

(b) An employee may not, directly or indirectly, use or allow the use of his title or position in connection with any commercial enterprise or in endorsing any commercial product or service.

SEC. 21. *Misuse of information.* An employee may not, for the purpose of furthering a private interest, directly or indirectly, use or allow the use of official information obtained through or in connection with his Association employment, if that information has not been made available by the Association to the general public.

SEC. 23. *Indebtedness.* Each employee shall pay his just financial obligations in a proper and timely manner, especially those imposed by law such as Federal, State, or local taxes. For the purposes of this section "just financial obligations" means those that are recognized as such by the employee or reduced to a judgment by a court, and "in a proper and timely manner" means in a manner which the Association determines does not, under the circumstances, reflect adversely on the Association as his employer. The Association will not determine the validity or amount of a disputed debt and will not initiate action to collect such debts.

SEC. 25. *Miscellaneous provisions.* (a) Each employee shall acquaint himself with these regulations which relate to his ethical and other conduct as an employee of the Association.

(b) In the appointment of personnel and in assignment of their duties, the President of the Association shall take steps to avoid, to as great an extent as possible, any conflict between the Association duties and the private interests of such personnel.

SUBPART C—STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST

SEC. 31. *Employees required to submit statement.* (a) Each of the following employees shall submit a statement of employment and financial interest on a form provided by the Association:

(1) Each employee who within the preceding two years was employed by or served as an attorney or consultant to, a railroad or a company significantly engaged in the manufacture, construction or supply of railroad facilities and equipment, including, but not limited to, rolling stock, terminal facilities, signal equipment, track and road bed, and electrical and communication transmission equipment. The General Counsel shall decide, in a doubtful case, whether the relationship to the railroad industry is sufficiently significant as to require submission of a statement of employment and financial interest.

(2) Each employee who is in a position identified in Appendix 2.

(b) Any employee who believes that his position has been improperly included as one requiring the submission of a statement of employment and financial interest is entitled to have that inclusion reviewed by the General Counsel.

(c) Any employee in a position which meets the criteria in paragraph (a) of this section may be excluded from the reporting requirements of this section if the General Counsel determines that the duties of the position are at such a level of responsibility that the submission of a statement is not necessary because of the degree of supervision and review and the remote or inconsequential effect on the integrity of the Association.

SEC. 33. *Time and place for submission of employee statements.* Each employee who is subject to the reporting requirements of sec. 31 shall submit his employment and financial interest statement to the General Counsel within 30 days after entering the employ of the Association.

SEC. 35. *Supplementary statements.* (a) Each employee shall, not later than July 31 of each year, file a supplementary statement, showing, as of June 30 of that year, any change in, or addition to, the information contained in his statement of employ-

ment and financial interest. If changes or additions have not occurred, a negative report is required.

(b) Compliance with the reporting requirements of this Subpart is not an alternative to observance of the conflict-of-interest provisions of Subpart B of these regulations, but is to facilitate uniform compliance with, and the orderly administration of Subpart B.

SEC. 37. Committee on Commerce, *Information not known by employee.* If any information required to be included on a statement of employment and financial interest or a supplementary statement, including any holding placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information on his behalf, and the employee shall so notify the General Counsel.

SEC. 39. *Information not required.* An employee is not required to submit on a statement of employment and financial interest or supplementary statement any information relating to his connection with, or interest in, a professional society, or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. For the purposes of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Association are considered to be "business enterprises" and are required to be included in the employee's statement of employment and financial interest.

SEC. 41. *Confidentiality of employee's statement.* (a) Except for special statements of financial interest required by sec. 13(c) each statement of employment and financial interest and each supplementary statement shall be held in confidence. The reviewing officials and others who receive statements are responsible for maintaining them in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purposes of these regulations. Information may not be disclosed to any person outside the Association, except as the General Counsel may determine for good cause shown. No disclosure permitted by this paragraph may be made unless the affected employee has been notified that disclosure is contemplated, and the employee is given an opportunity to present reasons and arguments to maintain the confidentiality of the statement.

(b) Each statement of employment and financial interest and each supplementary statement shall be maintained in the records of the Association.

SEC. 43. *Interpretation and advisory service.* The General Counsel shall provide authoritative counseling and interpretations to employees who require advice and guidance on questions of conflicts of interest or any other matters of legal import covered by these regulations.

SUBPART D—DISQUALIFICATION OF FORMER EMPLOYEES IN MATTERS CONNECTED WITH FORMER DUTIES OR OFFICIAL RESPONSIBILITIES; DISQUALIFICATION OF PARTNERS

SEC. 51. *Matters in which employee participated personally and substantially.* Except as permitted by sec. 55 hereof, an employee of the Association, after his employment has ceased, may not act as agent or attorney for anyone other than the Association in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties, in which the Association is a party or has a direct and substantial interest and in which he participated personally and substantially as an employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed.

SEC. 53. *Matters under employee's official responsibility.* Except as permitted by sec. 55 hereof, an employee of the Association may not, within one year after his employment has ceased, appear personally before the Association or any court or department or agency of the Government as agent, or attorney, for anyone other than the Association in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties, in which the Association is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Association at any time within a period of one year prior to the termination of such responsibility.

SEC. 55. *Employee with outstanding scientific or technological qualifications.* A former employee with outstanding scientific or technological qualifications may act as attorney or agent or appear personally in connection with a particular matter in a scientific or technological field if the General Counsel certifies in writing, in advance, that the public interest would be served by such action or appearance.

SEC. 57. *Partner of employee.* A partner of an employee of the Association may not act as agent or attorney for anyone other than the Association, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusa-

tion, arrest, or other particular matter in which the Association is a party or has a direct and substantial interest and in which such employee of the Association participates personally and substantially as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility.

APPENDIX 1—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTIONS 13(a), 15, AND 17(a)

I. (a) The following are exempted from the prohibitions of sections 13(a), 15, and 17(a), because they are too remote or too inconsequential to affect the integrity of an employee's services in any matter in which he may act in his official capacity.

(1) Any holding in a widely held mutual fund, or regulated investment company, which does not specialize in the transportation industry.

(2) Ownership of shares of stock and of corporate bonds or other corporate securities, if the current aggregate market value of the stocks and other securities so owned in any single corporation is less than $10,000 and is less than one percent of the outstanding stock of the organization concerned, and if the employee, his spouse, or minor children are not active in the management of the organization and have no other connection with or interest in it.

(3) Continued participation in a bona fide pension, retirement, deferred compensation, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plans are vested and require no additional services by him. To the extent the welfare or benefit plan is a profit sharing or stock bonus plan, this exemption does not apply.

(b) Notwithstanding paragraph 1(a)(2), the interest of an employee, whose position is listed in section II of this appendix, shall not be exempt from the prohibitions of sections 13(a), 15, and 17(a), with respect to any stock or other security holding in an organization to which he is assigned, or for which he has specific responsibility as a part of his regular duties, for conducting inspections or issuing certificates, waivers, exemptions, or approvals.

II. The following is a list of positions to which the exemption in paragraph 1(a)(2) of this appendix does not apply. This list may be amended at any time by the Association.

[To be supplied].

APPENDIX 2—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST UNDER SECTION 31

[Reserved].

(Sec. 202(a)(5)(2) of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236))

[39 FR 3825, Jan. 30, 1974]

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised semiannually (January 1 and July 1).

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The Director of the Federal Register approves the following incorporations by reference for one year effective October 1, 1981, unless otherwise noted (5 U.S.C. 552(a) and 1 CFR Part 51). For more information on incorporation by reference, see the preliminary pages of this volume.

	CFR Citation
American National Standards Institute	
New York, NY	
Available from: Office of Environment and Safety, DOT, 400 7th St., SW, Washington, DC 20590.	
ANSI A117.1–1961 (R1971), American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped.	27.5; 27.67
Interagency Land Acquisition Conference	
Available from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402	
Uniform Appraisal Standards for Federal land Acquisition (1972 Edition), Stock No. 5259–0002.	25.260

[46 FR 47953, Sept. 30, 1981]

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(b) and (t) revised; (n) removed; (u) and (v) added ..... †30821
1.47 (c) CFR correction 35366
(a) revised; (k), (l), and (m) added ..... †30821
1.48 (b)(14) revised; (r) and (s) added ..... †6659
(b)(25)—(30) redesignated as (b)(25)—(31); new (b)(25) added ..... †14764
(b)(32)—(37) redesignated as (b)(35)—(40); new (b)(32) and (33) added ..... †14764

NOTE: Asterisk (*) identifies changes published in 1974.

NOTE: Symbol (†) refers to 1975 page numbers.

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39 (40†) FR Page

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(c)(1) and (15), and (n) revised; (t) added ..... †14764
(b)(25) and (32) revised ..... †17992
(d) revised (u) and (v) added ..... †30822
1.49 (b) and (l) revised; (r) added ..... †3412
(f) revised; (t) and (u) added ..... †30822
1.50 (h) added 35666
(a), (f)(2) and (3) revised; (i) and (j) added ..... †6659
(g) revised ..... †14765
1.51 (f) revised; (h) added ..... †3412
(b) revised ..... †14765
(i) added ..... †17992
1.52 (b)(3) revised ..... †30822
1.53 (k) removed 39724
1.56 Removed 39724
1.57 (i) revised 39724
1.58 Introductory sentence revised; (d)(3) added 38103
(h) added 39724
(d)(4) added ..... †20089
(d), (e) and (g) removed ..... †30822
(f) and (h) redesignated as (d) and (e); new (f) added ..... †33976
1.60 (b)(1), and (c)(2) and (4) revised; (b)(8) added 39724
(l) revised ..... †3412
1.61 Revised 39724
1.64 Removed 39725
Added ..... †30822
1 Appendix A amended ..... †30822, 31605
7 Revised ..... †7915
7.5 (f) added ..... †13307
7.63 (b) and (c) corrected ..... †10471
7.81 (a) corrected ..... †10471
7 Appendices A–E revised; F amended ..... †20276
21 Appendix C amended ..... †14318
25 Revised ..... †41040

1975–1976

(Regulations published from October 1, 1975 through September 30, 1976)

49 CFR

40 (41Δ) FR Page

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1.4 (f)(4) added Δ42956
1.42 Revised Δ1288
1.43 (b) revised Δ1288
1.46 (n)(8) and (9) added Δ14519
1.47 (k) corrected Δ20172

NOTE: Symbol (Δ) refers to 1976 page numbers.

49 CFR—Continued

40 (41Δ) FR Page

Subtitle A—Continued

(j) corrected (erroneously designated as (k)) Δ29696
(l) added Δ31535
1.48 (b)(29) and (33) amended Δ41703
(c)(16) added Δ41703
1.49 (q) amended; (u) added Δ20680
1.50 (f) revised Δ25015
(j) added Δ35849
1.51 (k) added Δ20680
1.51 (l) added Δ41703
1.54 (a) revised Δ1288
1.55 (i) added Δ1288
(h) amended Δ20680
1.56 (n) amended Δ20680
1.57 (d) added Δ35849
1.59 (c)(1) revised Δ1288
(l)(3) added Δ20680
(a)(3) and (m) added Δ35849
1.62 (h) amended Δ31535
1.63 (c) added Δ35849
1.64 Added Δ1288
1.65 Added Δ1288
10 Added 45729
I. General exemptions redesignated as Appendix A and amended Δ24822
10.1 (b) and (d) amended Δ24822
10.12 Added Δ24822
10.31 (b) amended Δ24822
10.32 Added Δ24822
10.41 Amended Δ24822
10.43 Amended Δ24822
10.51 (c) amended Δ24822
10.61 (a) revised 57362
(b) amended Δ24822
10.63 (b) amended Δ24822
10.81 Amended Δ24822
10.83 Amended Δ24822
10.85 Amended Δ24822
10 Appendix I heading added 54001
Appendix I amended 57362
Appendix I amended Δ22564
Appendix A redesignated from Appendix I Δ24822
Appendix B added Δ24822
Appendix C added Δ24823
Appendix D added Δ24825
Appendix E added Δ24826
Appendix F added Δ24827
Appendix G added Δ24828
Appendix H added Δ24829
Appendix J added Δ24830
25.153 Revised 58456

NOTE: Symbol (Δ) refers to 1976 page numbers.

49 CFR—Continued

40 (41Δ) FR Page

Subtitle A—Continued

25 Appendix A revised Δ3300
Appendix A tables revised Δ24589
73 Removed 40110
81 Added Δ32594
99 Appendix A amended Δ17911

1976–1977

(Regulations published from October 1, 1976 through September 30, 1977)

49 CFR

41 (42*) FR Page

Subtitle A

1.4 (f)(5) added 53798
1.22 (a) and (b) amended; (c) removed; (d) through (j) redesignated as (c) through (i) 44042
1.23 (a) amended 44042
1.44 (e)(8) added *22366
1.45 (a)(10) added 45011
1.46 (v) added *12176
(w) added *22366
(v) corrected as (w) *46306
1.47 (f) revised 48122
1.49 (q), (r), and (u) revised 56327
1.53 Revised *37210
1.55 (h) amended 56327
1.56 (n) removed 56327
1.59 (c)(8) amended; (c)(10) added 45011
(a)(4) added 49487
(l) removed; (m) redesignated as (n); new (l) and (m) added 56327
(b)(9) added *22366
1.64 Revised 44042
1.65 Removed 44710
1 Appendix A amended 44043
25 Appendix A tables revised *13, 35961
85 Appendix amended *45800
91 Added 54770
99 Revised *3119
99.735-11 (a)(2) corrected *5359
99.735-15 (a) and (c)(2) corrected *5359
99.735-35 (b) corrected *5359
99.735-37 Corrected *5359
99 Appendixes B and C corrected *5359
Appendix C amended *8144, 24278, 39220

NOTE: Symbol (*) refers to 1977 page numbers.

1977–1978

(Regulations published from October 1, 1977 through September 30, 1978)

49 CFR	42 (43†) FR Page
Subtitle A	
1.46 (n)(10) and (x) added	61865
(n)(11) added	†5515
(n)(12) added	†17360
1.49 (m) revised	†14021
1.53 Revised; eff. 9-23-77	†5516
(d) added	†17360
1.64 Revised	58754
1 Appendix A amended	58754
Appendix A amended	†5834
25 Appendix A tables revised	†10914, 33726
71.5 (b) revised	56610
71.7 (b) amended	†42763
85 Appendix amended	†24693
Redesignated as Part 101	†43305
99.735-13 (a) CFR correction	†26311
99.735-35 (a) CFR correction	†26311

1978–1979

(Regulations published from October 1, 1978 through September 30, 1979)

49 CFR	43 (44Δ) FR Page
Subtitle A	
1.22 (a) amended	Δ43729
1.23 (e) amended; (n) added	Δ43729
1.44 (p) added	Δ2395
1.45 (a)(8) revised	Δ40641
1.46 (z) added	Δ2395
(y) added	Δ5437
(n)(4) revised	Δ10063
(z) revised	Δ43730
1.52 (a) revised	Δ10064
1.53 Heading and introductory text revised; (a)(6) added	Δ2395
1.56 (n) added	Δ47937
1.59 (c)(6) revised	Δ40641
(c)(5) removed	Δ47937
1.65 Added	Δ43729
5.41—5.59 (Subpart D) Added	Δ4677
7 Appendix B amended	48646
25 Appendix A tables revised	Δ7702, 40643
27 Added	Δ31468
71.11 Heading revised; undesignated text designated as (a) and (b) added	Δ55576
49 CFR—Continued	43 (44Δ) FR Page
Subtitle A—Continued	
99.735-3 Amended	54251
99 Appendix C amended	54251
Appendix C amended	Δ9755
Appendix C amended	*81445, 24278, 39220

NOTE: Symbol (†) refers to 1978 page numbers.
NOTE: Symbol (Δ) refers to 1979 page numbers.

1979–1980

(Regulations published from October 1, 1979 through September 30, 1980)

49 CFR	44 (45*) FR Page
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1.46 (t) revised	*2655
(n)(13) added	*8993
(n)(4) revised	*48630
1.47 (d) amended	*783
(m) added	*54055
1.48 (d) removed	*14576
(w) added	*57674
1.49 (f) removed	*14576
1.52 (a) revised	*48630
1.53 Introductory text amended; (a)(5) and (b)(3) revised	*14576
Technical correction	*16194
1.59 (m) revised	70164
(b)(8) revised	26068
1 Appendix A amended	*14577
7 Appendix G revised	65765
10 Revised	*8993
23 Added	*21184
Effective date corrected	*23441
Policy statement	*45281
25 Appendix A tables revised	*59154
Incorporation by reference approval	*64832
27 Incorporation by reference approval	*64832
27.81—27.107 (Subpart E) Intent to prepare EIS	*11495
71.10 Revised	*25065
Revised; eff. 10-26-80	*63494
71.10a Added; regulations transferred from 71.11(b)	*25065
Removed; eff. 10-26-80	*63494
71.11 Heading and text revised	*25065
Revised; eff. 10-26-80	*63494

NOTE: Symbol (*) refers to 1980 page numbers.

1980–1981

(Regulations published from October 1, 1980 through September 30, 1981)

49 CFR

45 (46†) FR Page

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1.2 (a) revised; (h) added.....83403
(i) added.....†47458
1.3 (c) removed; (b) introductory text and (8) revised.....83403
(b)(9) added.....†47458
1.4 (i) revised.....83403
(j) and (k) added.....†47458
1.22 Revised.....83403
1.23 Revised.....83403
1.24 (b) through (d) revised.....83404
1.25 (b) revised.....83405
1.26 Revised.....83405
(a)(7) added.....†6012
1.42 Amended.....83405
1.43 (b) revised.....83405
1.44 Introductory text amended; (q) added.....†47459
1.45 (a)(5) amended; (a)(10) redesignated as (a)(11) and republished; new (a)(10) and (12) added.....83405
(a)(13) added.....†22593
1.46 (aa) through (cc) added.....83405
(dd) added.....†23057
(ee) added.....†26651
(c) (2), (3), and (4) removed; (c) (5) through (10) redesignated as (c) (2) through (7); (n)(14) added.....†29269
1.47 (a), (b), and (f)(2) amended; (m) revised.....83405
(g) revised.....†9603
1.48 Revised.....83405
1.49 (f) removed; (g) through (u) redesignated as (f) through (t); new (o) and (t) revised; new (u) and (v) added; new (i), (l), (o), and (t) amended.....83407
(w) added.....†42462
(w) republished.....†42678
1.50 Revised.....83407
1.51 Revised.....83408
1.53 (f) added.....†10919
1.54 (a) and (b)(7) amended.....83408

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45 (46†) FR Page

Subtitle A–Continued

(b)(10) added.....†22593
1.55 (f) revised.....83408
1.56 Redesignated as 1.57; new 1.56 added.....83408
1.57 Removed; new 1.57 redesignated from 1.56; new (b), (e), and (j) amended.....83408
1.58 Removed; new 1.58 redesignated from 1.64.....83409
1.59 (a)(1) and (c) (1) and (3)(i) amended; (a)(4) and (n) removed; (c) (6) through (10) redesignated as (c) (5) through (9); (b)(8), (e), and (k) through (m) revised.....83409
1.60 Removed.....83409
1.61 Revised.....83409
1.62 Removed; new 1.62 redesignated from 1.65 and revised.....83409
1.63 (d) added.....83409
1.64 Redesignated as 1.58; new 1.64 added.....83409
1.65 Redesignated as 1.62 and revised; new 1.65 added.....83409
1.66 Added.....†47459
1.67 Added.....†47460
1 Appendix A amended.....†37902
3 Revised.....75666
3.3 (a) amended.....†42272
23.45 (h) revised; (i) removed; Appendix A added.....†23461
23.51 Effective date confirmed...67667
25 Appendix A tables revised...†9604, 36857
Incorporation by reference approvals.....†47938
27 Incorporation by reference approvals.....†47938
27.5 Amended; interim.....†37492
27.61 Amended; interim.....†37492
27.65 (c) amended; interim.....†37492
27.67 Heading revised; (a) amended; interim.....†37492
27.71—27.77 (Subpart D) Heading revised; Appendixes A and B added; interim.....†37492
27.77 Added; interim.....†37492
27.81—27.107 (Subpart E) Removed; interim.....†37492

NOTE: Symbol (†) refers to 1981 page numbers.